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No. 91-405

In The

Supreme Court of the United States

October Term, 1991

CITY OF JERSEY CITY, a political subdivision, JERSEY CITY POLICE DEPARTMENT, and RICHARD HARRISON and WALTER ADAMS, Directors of the Jersey City Police Department,

Petitioners,

vs.

MICHAEL J. REDFIELD,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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IN THE

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CITY OF JERSEY CITY, a political subdivision, JERSEY CITY POLICE DEPARTMENT, and RICHARD HARRISON and WALTER ADAMS, Directors of the Jersey City Police Department,

Petitioners

vs.

MICHAEL J. REDFIELD,

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

QUESTION PRESENTED

Whether, in a Civil Rights Sec. 1983 public employment case, the district court refused to instruct the jury as to critically important issues of state law relating to property interests, and whether the district court failed to apply appropriate state law in denying judgment N.O.V.

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Petitioner, City of Jersey City, respectfully requests that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit entered in this proceeding on June 4, 1991.

OPINIONS BELOW

The judgments and opinions of the circuit court and the district court are not reported. The judgment order of the circuit court appears at Appendix A. The decision and order of the district court denying the City's motion for judgment N.O.V. dated August 15, 1990 appears in the Appendix E. The decision and order of the district court of January 23, 1989 upon reconsideration of the court's earlier summary judgment decision appears as Appendix C. The district court's July 29, 1988 decision and order on cross-

motions for summary judgment appears as Appendix D.

JURISDICTION

The judgment of the Court of Appeals for the Third Circuit was entered on June 4, 1991. The court's jurisdiction is involved under 28 U.S.C. Sec. 1254(1).

STATUTES AND REGULATION INVOLVED

1. 42 U.S.C. Sec. 1983 provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

2. N.J.S.A. 11A:4-13 provides:

Types of appointment

The commissioner shall provide for the following types of appointment:

a. Regular appointments shall be to a title in the competitive division of the career service upon examination and certification or to a title in the noncompetitive division of the career service upon appointment. The appointments shall be permanent after satisfactory completion of a working test period.

3. N.J.S.A. 40A:14-147 provides:

Suspension and removal of members and officers; complaint; hearing

Except as otherwise provided by law, no permanent member or officer of the police department or force shall be removed from his office, employment or position for political reasons or for any cause other than incapacity, misconduct, or disobedience of rules and regulations established for the government of the police department and force, nor shall such member or officer be suspended, removed, fined or reduced in rank from or in office, employment, or position therein, except for just cause as hereinbefore provided and then only upon a written complaint setting forth the charge or charges against such member or officer. Said complaint shall be filed in the office of the body, officer or

officers having charge of the department or force wherein the complaint is made and a copy shall be served upon the member or officer so charged, with notice of a designated hearing thereon by the proper authorities, which shall be not less than 10 nor more than 30 days from date of service of the complaint. A failure to comply with said provisions as to the service of the complaint shall require a dismissal of the complaint.

4. N.J.S.A. 40:174-148 (repealed 1988) provides:

> After five years' service as detective not reduced
>
> 1. Whenever, in any police department of any city of the first class in this state, any member of such department shall have been appointed or designated as detective under or by authority of a resolution of the governing body of such city, and by and with the consent of the state civil service commission, and shall have performed the duties of such detective for a period of five years, he shall not hereafter be reduced in rank or restored to the performance of duties ordinarily performed by patrolmen in such department except upon charges and after hearing. Hereafter any such peson shall hold the rank of detective in such department and be entitled to the

emoluments thereof.

5. Rule 723, Rules and Procedures, Jersey City Police Department, provides:

> Any permanently employed officer or employee who receives a fixed annual salary from the municipality shall not be suspended, removed, fined or reduced from office or employment therein except for just cause and then only after written charges and complaint shall have been preferred.

6. The applicable collective bargaining agreement is set forth at Appendix H.

STATEMENT OF THE CASE

This matter arises from Respondent Redfield's allegation that he had a constitutionally protected property interest in the position of "detective" with the Jersey City Police Department, and that he was deprived of his due process rights when he was reassigned to the position of uniformed patrolman, in violation of 42 U.S.C. Sec. 1983.

On October 1, 1986, Redfield filed

a Complaint in the U. S. District Court. The district court initially ruled upon cross-motions for summary judgment on July 29, 1988. The City then moved for reargument and reconsideration. The district court reconsidered its previous determinations and rendered a decision dated January 23, 1989. The net results of both decisions were:

> 1. To grant the City's motion for summary judgment on Redfield's claims of a liberty interest due process violation, and of a denial of equal protection under the laws;
>
> 2. To grant individual defendants Harrison and Adams' motion for summary judgment based on qualified immunity;
>
> 3. To partially grant the City's motion for summary judgment on Redfield's claim of a property interest, ruling that while there is no permanence in the position of detective by virtue of state law, Redfield should be given the opportunity to prove his property interest based upon custom and practice; and

4. To leave for jury determination the following issues:

> a. did the custom, practice, regulations and agreements create a mutual expectation that Redfield had acquired a property interest in the position of detective such that certain due process proceedings were required;
>
> b. if so, was Redfield afforded the right to such proceedings; and
>
> c. if Redfield had a property interest in the position of detective, and if Redfield was denied the required due process procedure, what damage can be claimed.

The trial of the matter was held over eight days, commencing July 19, 1991. At the conclusion of Redfield's case, the City moved for a directed verdict, and the district court stated, "The record indicates the appropriate motion has been made. I will reserve on it until the end

of the defendant's case. There are some critical issues we have to discuss." **(App. F, *infra*, at 60a).**

At the conclusion of the City's case, the parties discussed those critical issues, including the City's request that the jury be instructed on the legal rulings concerning state law and Redfield's property interest which the district court had made in the pre-trial decisions. The court denied this request, noting, "If we ever said it to the jury, this case would be over." **(App. F, *infra*, at 65a).** The case was submitted to the jury without specific interrogatories and the jury returned its verdict for Redfield on August 1, 1990.

On August 15, 1990, the City filed a notice of motion for judgment N.O.V., which the district court accepted as

timely and properly filed, but which was denied in a decision dated November 13, 1990. This denial was entered on the district court docket December 3, 1990. The City appealed to the Third Circuit on both the denial of the judgment N.O.V. and the jury verdict. Oral argument was heard on May 15, 1991 and, by order dated June 4, 1991, the Third Circuit affirmed the judgment of the district court.

The City respectfully petitions the Supreme Court to issue a Writ of Certiorari to the Third Circuit to review this judgment, and asserts that the district court wrongfully refused to instruct the jury as to critically important issues of state law relating to permanence and a property interest, and further asserts that the district court judge failed to correctly apply the

jury's finding to the intricacies and trends of state law in his denial of the judgment N.O.V.

REASONS FOR GRANTING THE WRIT.

A. THE THIRD CIRCUIT ERRED IN AFFIRMING THE DISTRICT COURT JUDGE'S REFUSAL TO FULLY CHARGE THE JURY ON STATE LAW.

Redfield's action in federal court was brought pursuant to 42 USC Sec. 1983 and was premised on Redfield's allegation that he had acquired a constitutionally protected property interest in the position of "detective" in the Jersey City Police Department. Integral to the legal concept of such a property interest is the requirement that there be "permanence," as recognized under state law, attached to the property interest. In other words, if no "permanence"

attached to the position of detective, then no constitutionally protected property interest existed. Bd of Regents v. Roth, 408 U.S. 564 (1972); Perry v. Sindermann, 408 U.S. 593 (1972); Bishop v. Wood, 426 U.S. 341 (1976).

In response to pre-trial motions, the district court analyzed New Jersey State law to find whether permanence attached to the position of detective. In reconsidering its earlier determination as to summary judgment motions, the court stated, "...it is clear and indeed undisputed that plaintiff is not a 'permanent' employee as a detective under state law. State law does not now recognize such a position and accordingly plaintiff has not qualified for it by virtue of existing state law..." (App. C, *infra*, at

37a).

During the trial, the judge permitted documentary and testimonial evidence concerning state law and permanence, the specifics of which are detailed below. When, at the conclusion of the trial, defense counsel specifically requested that the jury be instructed on the state law and the legal findings which the court had previously made, the judge refused, stating, "If we ever said it to the jury, this case would be over." He further stated, "I do not agree that what we should do is tell the jury what has been decided as a matter of law." **(App. F, *infra*, at 65a-66a).** It is respectfully submitted that the jury could not, and did not, correctly apply the facts to the law, since the judge refused to fully tell them what the

applicable law was.

Jersey City is a civil service community and, therefore, its personnel matters are pervasively controlled through New Jersey's Civil Service Law, N.J.S.A. 11A:1-1 et seq., and regulations, N.J.A.C. 4A:1-1 et seq. This law defines when a job position is "permanent." Construing the statute, the court noted in its decision on reconsideration, that "detective" is not a position to which civil service grants employment rights **(App. C, *infra*, at 36a-37a).**

Notwithstanding, the jury was allowed to hear many testimonial references and to see documentary exhibits relating to civil service. For example, Jersey City Chief of Police Harrison testified as to state civil

service control over a patrolman's assignment to the position of detective **(App. F, *infra*, at 61a-63a).** Documentary evidence included civil service forms which indicated that a move from patrolman to detective is an "assignment," not a "promotion," and a move from detective to patrolman is also an "assignment," not a "demotion" **(App. G. *infra*, at 70a-72a).**

Another state law referencing civil service which impacted on whether permanence attached to Redfield's position as detective was N.J.S.A. 40:174-148. Lt. Dooley, a police officer and attorney assigned to the Jersey City Police Department Legal Bureau, read that statute into the record.

Thus, in spite of the obvious relevance of state law to Redfield's

permanence and, hence, property interest in the position of detective, and in spite of the evidence in the record allowed before the jury concerning state law, the court refused to instruct the jury on it. The easily drawn inference, which the jury obviously made, as evidenced by its decision, was that permanence as an employee was sufficient to give rise to a constitutionally protected property interest regardless of whether the permanence was as a "police officer" or a "detective." However, in point of fact, Redfield's permanent position of "police officer" and his constitutionally protected property right in that position was never subject to deprivation.

The court admitted into evidence police department rules and regulations

which specifically refer at Rule 723 to the rights of a "permanently employed officer" **(App. G, *infra*, at 73a).** The court also admitted into evidence a copy of N.J.S.A. 40A:14-147, which also deals with the due process requirements for disciplining a "permanent member or officer of the police department or force." Again the clear inference for the jury to make was that Redfield's permanence as a police officer was sufficient to trigger a constitutionally protected property interest regardless of the fact that neither the rules nor the latter state law attributed permanence to the position of detective and regardless of the fact that Redfield had not in any way been deprived of his property interest in the position of police officer.

Finally, the court clearly indicated its opinion that the jury was not to determine whether or not Redfield had permanence or a property interest in the position of "detective," but rather whether or not Redfield had permanence in the position of "police officer." In his charge to the jury, the judge stated, "First, he [Redfield] must prove that he was permanently employed by the Defendant, as a police officer, and was employed in a rank or position as a detective, and that detective was a rank or position separate and apart from patrolman." (emphasis added) **(App. F, *infra*, at 67a).** To make this instructional statement in conjunction with refusing to instruct the jury on the state law concerning permanence in the position of detective was an error which

precluded the jury from properly carrying out its function. Before the issues of demotion or discipline or hearing rights could even be considered, the jury had to determine the threshhold question of whether or not Redfield had permanence and, consequently, a property interest in the position of detective. Without the determination that there was permanence which attached to the position of detective upon assignment thereto, Redfield had no other constitutionally protected rights to raise in the District Court forum, and the jury had no ability to address any other issues.

Yet the court refused to instruct the jury on the state law concerning the threshhold issue and instead instructed them that all they needed to find was permanence in the position of police

officer, and to then determine whether Redfield had been disciplined. The jury responded, not surprisingly, by not dealing with the threshhold issue at all. Their finding merely stated, "We, the jury, find for the Plaintiff. We find he was proven to have been disciplined and was thereafter denied his right to a hearing." **(App. F, *infra*, at 68a).** All of which means nothing and underscores the confusion created by the court's incomplete charge.

Therefore, the City respectfully requests that the Court accept the City's Petition for Certiorari and find that the Third Circuit erred in affirming the sufficiency of the District Court Judge's incomplete statement of the law.

B. THE THIRD CIRCUIT ERRED IN AFFIRMING THE DISTRICT COURT'S CONSTRUANCE OF STATE LAW THAT CONFLICTS WITH STATE COURT DECISIONS ANALYZING EMPLOYMENT ENTITLEMENTS IN PUBLIC SECTOR COLLECTIVE BARGAINING SETTINGS.

Property rights of public employees may arise under express rules governing working conditions or by mutually explicit understandings. Perry, supra, at 601. In each case, however, the property interest must be gleaned from entitlements that are recognized pursuant to state law. Thus, in Bishop v. Wood, supra, the court observed:

> "A property interest in employment can, of course, be created by ordinance, or by an implied contract. In either case, however, the sufficiency of the claim of entitlement must be decided by reference to state law." Id., at 344.

In the present case, the court of appeals affirmed the district court's denial of the City's Motion for Judgment N.O.V., and in so doing, it approved the district court's finding that under applicable principles of New Jersey law, Redfield had a property interest in maintaining a police detective position. Normally, this Court accepts the decisions of the circuit and district courts as to interpretations of state law. Bishop, supra, at 345-346. However, this Court's review is entirely appropriate where the federal court interpretation of state law "may be shown to be unreasonable." Propper v. Clark, 337 U.S. 472, 486-487 (1949).

In its denial of judgment N.O.V., the district court observed:

> A constitutionally protected property interest may be grounded in custom or a mutual

understanding. See Perry, 408 U.S. at 601; Stana v. School Dist., 775 F.2d 122, 126 (3d Cir. 1985) ("Property interests ... can also arise from written or unwritten state or local government policies or from 'mutually explicit understandings' between a government employer and employee") (citations omitted). Further, the existence of a property interest "must be decided by reference to state law." See Bishop v. Wood, 426 U.S. 341, 344 (1976). There is ample basis in New Jersey law supporting plaintiff's assertion of a property interest. First, it is amply established that a course of dealing may give rise to an implied contract. See St. Paul Fire & Marine Ins. Co. v. Indemnity Ins. Co., 32 N.J. 17, 24-26 (1960); Kozlowski v. Kozlowski, 164 N.J. Super. 162, 174 (Ch. Div. 1978), aff'd, 80 N.J. 378 (1979). Furthermore, New Jersey recognizes implied contracts, oral or written promises made by employers to employees, as binding. See Woolley v. Hoffmann-LaRoche, Inc., 99 N.J. 284, modified, 101 N.J. 10 (1985). Finally, the existence of an articulated departmental policy, such as the policy of promotion to and retention at the rank of detective found by the jury in

> this case, provides a sufficient state law basis for a property interest. See Stana, 775 F.2d at 126-27 & n.3 (teacher had entitlement in classification on eligibility list where place on list was "the central factor in the School District's communicated policy to award teaching positions").
>
> Thus the jury's implicit finding that plaintiff had a mutually understood entitlement in his position is adequately supported as a matter of law under any of these three related theories. The court has made an independent finding of both fact and law that plaintiff had a property interest in the position of detective which required a hearing before he could be returned to the position of patrolman. **(App. E, *infra*, at 49a-50a).**

The City submits that the district court fundamentally erred when it failed to apply the jury's factual findings to a proper analysis of the intricacies and trends of local law upon which this Court's deferral process is premised.

Not any of the three above cases arising under New Jersey decisional law concern public employment issues. Two of the cases do not even concern employment issues. St. Paul Fire & Marine Ins. Co., supra, concerns contractual relationships arising in connection with two insurance policies covering an insured with respect to an accident claim not involving an employee. Kozlowski, supra, concerned a contractual claim asserted against a man by a former female cohabitant for reasonable value of her nurturing services predicated in part by defendant's oral promise to take care of plaintiff for the rest of her life.

A fourth case cited referenced by the district court, Stana, supra, although a decision of the Court of Appeals of the Third Circuit, is a

Pennsylvania case not implicating New Jersey law.

Thus, as to the four referenced cases cited by the district court, only Woolley, supra, a private sector employment-at-will case, involves New Jersey law implicating contractual employment entitlements. In contrast, the present case involves public sector employment issues arising with respect to the employment entitlements of a collectively represented and civil service classified employee. N.J.S.A. 11A:1-1 et seq.; N.J.S.A. 34:13A-1 et seq. See also Lullo v. Int'l Ass'n of Firefighters Local 1066, 55 N.J. 409, 262 A.2d 681 (1970). Inasmuch as the district court had previously found as a matter of law that the plaintiff did not have a permanent property interest in his

detective position recognizable under the state's comprehensive civil service laws, the court's responsibility was to carefully analyze Woolley to ascertain whether it adopted state law principles of potential and probable applicability to public sector collectively represented employees claiming permanency entitlements superior to those provided by statutory law.

The district court's broad sweep of Woolley principles concerning implied contractual entitlements arising through written personnel rules or oral promises was improper in that it failed to recognize the context sensitive concerns applied by the New Jersey Supreme Court to the specific matter under consideration.

In Woolley, supra, the New Jersey Supreme Court stressed that its context was construing employment of job security entitlements from a modern corporate personnel policy manual made applicable to a large complement of company employees. The Court was well aware of the inherent differences between implied contractual entitlements arising from employment manuals and specific contractual entitlements arising under collective bargaining agreements.

> We are aware that problems that do not ordinarily exist when collective bargaining agreements are involved may arise from the enforcement of employment manuals. Policy manuals may not generally be as comprehensive or definite as typical collective bargaining agreements... Id., at 308-309.

Notwithstanding the above recognized differences, one precept that is readily transferrable to the present context and

evident from Woolley relates t construing employment entitlements i accordance with the "reasonabl expectation" of the parties:

> ...we conclude that when an employer of a substantial number of employees circulates a manual that, when fairly read, provides that certain benefits are an incident of the employment (including, especially, job security provisions), the judiciary, instead of "grudgingly" conceding the enforceability of those provisions, Saverese, supra, 9 N.J. at 601, should construe them in accordance with the reasonable expectations of the employees. (emphasis added) Id., 297-298.

The significance of the abov statement to a collective bargainin context was fleshed out by the New Jerse Superior Court, Appellate Division, in post-Woolley matter, Ware v. Prudentia Ins. Co., 220 N.J. Super. 135, 531 A.2 757 (App. Div. 1987), certif. den. 11

N.J. 3, 35, 550 A2d 450 (1988), which case the district court evidently overlooked.

The Ware court succinctly observed:

> ...whereas the employer in Woolley was not unionized, the insurance agents employed by defendant were unionized and had entered into a collective bargaining agreement which governed their complete employment relationship with defendant, including the procedures required to be followed before their employment could be terminated. (footnote omitted) Therefore, it may be concluded that the "reasonable expectation" of defendant's insurance agents was that their employment relations were not governed by any personnel manual but rather, in the case of non-supervisory employees, by collective bargaining agreements, and in the case of supervisory employees, by individual employment contracts. (citation omitted). 220 N.J. Super., at 143.

In the present case, the facts established that the collective

bargaining agreement between the City and Redfield's collective negotiations representative contained a just cause job security provision within the grievance Article. Thus, Article XXII, Section 6 ("Grievance Procedures") of the bargaining agreement provided:

> No Police Officer shall be discharged, disciplined, reprimanded, reduced in rank, compensation, position, or deprived of any employment advantage of his service without just cause. Any such actions asserted by the City, or any agent or representative thereof, shall be subject to the grievance procedure herein set forth, including binding grievance arbitration. Grievants shall elect arbitration or pursuit of civil service remedies but not both. **(App. H, *infra*, at 103a).**

The record, with respect to the "reasonable expectations" that employees would have in the protections that Article affords, is summed up in the

testimony of Redfield himself. Redfield asked the Union President for assistance. The President met with the Police Director, and afterwards the former told Redfield that the detective assignment and the demotion was a managerial prerogative to which he had no recourse **(App. F, *infra*, at 55a-59a).**

In applying Woolley and Ware principles of law to the present matter, the district court should have focused on the reasonable expectations of the parties arising from the collective bargaining agreement, as opposed to the general amalgam of facts that the court found were implicitly observed by the jury. It is very evident from Woolley that the facts found by the jury as to Redfield's individually held expectations of job security would, under state law,

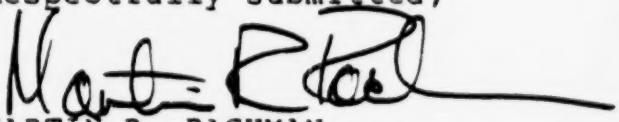
be irrelevant, inasmuch as the reasonable expectations of employees flowing from the bargaining agreement provided the only suitable framework as to the identification of Redfield's employment entitlements.

Thus, the trial court did not apply fundamental precepts of recognized state law concepts concerning Redfield's employment rights. Rather, it is apparent that the district court applied the facts found by the jury in a most liberal interpretation of contractual law not suitable to a collective bargaining public employment context. On this basis, the City submits that the circuit court affirmed the district court's fundamental error as to an important matter of public concern, and this court should grant the Petition for Certiorari.

CONCLUSION

For the foregoing reasons, Petitioner requests that its Petition for Certiorari be granted.

Respectfully submitted,



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Dated: August 28, 1991

APPENDIX A — JUDGMENT ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT DATED JUNE 4, 1991

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 90-6016

MICHAEL P. REDFIELD

v.

CITY OF JERSEY CITY, a political subdivision, JERSEY CITY POLICE DEPARTMENT; and RICHARD HARRISON; and WALTER ADAMS, DIRECTORS OF JERSEY CITY POLICE DEPARTMENT

CITY OF JERSEY CITY,

Appellant

Appeal from the United States District Court for the District of New Jersey
(D.C. Civil Action No. 86-03869)

District Judge: Honorable H. Lee Sarokin

Argued: May 15, 1991

PRESENT: HUTCHINSON, COWEN and GARTH, *Circuit Judges*

JUDGMENT ORDER

After consideration of the contentions raised by appellant, it is

Appendix A

ADJUDGED AND ORDERED that the judgment of the district court be and is hereby affirmed.

Costs shall be taxed against appellant.

By the Court,

s/ William D. Hutchinson
Circuit Judge

ATTEST:

s/ Sally Mrvos
Sally Mrvos, Clerk

DATED: June 4, 1991

Costs taxed in favor of Appellee Michael P. Redfield as follows:

TOTAL FOR BRIEFS $443.43

Certified as a true copy and issued in lieu
of a formal mandate on June 26, 1991.

Test: s/ Sally Mrvos

Clerk, United States Court of Appeals,
for the Third Circuit

APPENDIX B — INITIAL OPINION ON MOTION FOR SUMMARY JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY FILED JULY 29, 1988

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Civ. No. 86-3869

MICHAEL REDFIELD,

Plaintiff,

v.

CITY OF JERSEY CITY, et al.,

Defendants.

OPINION

SAROKIN, District Judge:

Before the court are cross-motions for summary judgment in this civil rights action. The court grants in part and denies in part each of the cross-motions.

BACKGROUND

This is an action under 42 U.S.C. 1983 by Michael Redfield, a police officer for the City of Jersey City. The defendants are the City of Jersey City, the Jersey City Police Department, and Richard Harrison and Walter Adams, the directors of the Jersey City Police Department. The lawsuit arises out of the defendants'

change, in October of 1984, of the plaintiff's job status. Because the events which triggered the job action are irrelevant to the cross-motions before the court, the court will recite the background facts as it gleans them from the plaintiff's papers.

In April of 1970, plaintiff joined the Jersey City Police Department as a foot patrolman. The defendants, after ten years of plaintiff's devoted and distinguished service, promoted or reassigned[1] him to the position of detective in April of 1980. This change entailed a salary increase. Plaintiff performed well as a detective and received numerous commendations.

Even after assuming the job of detective, plaintiff performed off-duty uniformed patrol work for private companies in order to supplement his income. One of the establishments for which plaintiff performed off-duty patrol work was "Foxes Discotheque" in Jersey City. On October 7, 1984, plaintiff was working for Foxes. At approximately 2:30 a.m., the owner of Foxes came out of the building and informed plaintiff that a number of Foxes' patrons were involved in a fight nearby. The fight had begun inside the disco; the disco's bouncers had thrown the fighting patrons out into the street.

Plaintiff ran around the corner to the reported location of the fight and saw a number of people running away. At the scene of the fight was Kenneth Bollhardt, a fellow Jersey City police officer who was at Foxes as a patron. Bollhardt, who had been involved in the tussle, demanded of plaintiff that he chase and arrest the others. Bollhardt claimed that the escaping men had assaulted him and stolen his jewelry. Plaintiff noted the smell

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1. Whether the change in duties was a promotion or a reassignment, a question of law, is the only issue in dispute.

of alcohol on Bollhardt's breath, concluded that Bollhardt had picked and lost a fight in the disco and now wanted his adversaries arrested, and refused to chase or arrest the others. Instead, he radioed for the assistance of a supervisor.

The supervisor, a Sergeant Leigh, arrived and drove Bollhardt to the hospital. Plaintiff immediately filled out a report on the incident, describing it as a "street fight assault." Bollhardt, however, began accusing plaintiff of failing to come to the aid of a fellow officer and of being ineffective in the performance of his duties. He made these charges orally to Captain Haining, plaintiff's superior officer, and in writing in his report on the incident. Haining, in turn, directed plaintiff to change his report so as to describe the incident not as a street fight, but as an aggravated assault and robbery. He also directed plaintiff to delete the portion of the report that mentioned Bollhardt's drunkenness.

At 5:00 a.m. on that same day, plaintiff began a five-day vacation. On October 11, 1984, defendant Police Director Harrison issued a directive demoting or reassigning[2] plaintiff from detective to patrolman and reducing his salary. The directive also transferred plaintiff to a new geographical division, which precluded any further off-duty work for Foxes. No defendant ever provided plaintiff with a reason for the job action. Nor did any defendant provide plaintiff with type of hearing or opportunity to explain his version of the events of October 7.

On October 1, 1986, plaintiff filed this lawsuit. He states three causes of action: "failing to accord the plaintiff due process

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2. Again, whether the October 11 job action was a demotion or a reassignment is the only contested issue.

in regard to his property interest in his employment" (first cause of action), "failing to afford the plaintiff due process in regard to his right to be free from taint in his reputation, good name, honor and integrity" (third cause of action), and denial of equal protection of the laws (second cause of action). Plaintiff moved for summary judgment on the complaint, claiming that the facts are undisputed and that he is entitled to a judgment as a matter of law. The defendants then cross-moved for summary judgment, agreeing with the plaintiff that the facts material to the causes of action are not in dispute, but contending that those facts entitle them to judgment as a matter of law.

DISCUSSION

I. *Procedural Due Process*

The Supreme Court has made eminently clear that "[t]he requirements of procedural due process apply only to the deprivation of interests encompassed by the Fourteenth Amendment's protection of liberty and property." *Board of Regents v. Roth*, 408 U.S. 564, 569 (1972). "To determine whether due process requirements apply in the first place, we must look . . . to the nature of the interest at stake." 408 U.S. at 571. Plaintiff Redfield alleges that defendants' actions infringed upon his protected property and liberty interests in his job and his good name.

A. *Property Interest*

The Supreme Court and the Third Circuit have had a number of opportunities to examine the due process implications of a government employer's decision to terminate or otherwise change an employee's employment without a hearing. A number of

principles have emerged from their discussions. First and most elemental is the precept that

> [t]he Fourteenth Amendment's procedural protections of property is a safeguard of the security of interests that a person has already acquired in specific benefits.

Board of Regents v. Roth, 408 U.S. at 576. It follows, then, that

> [t]o have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it.

408 U.S. at 577.

From what sources does an individual's "legitimate claim of entitlement" to a specific benefit flow? The *Roth* decision provided a general answer to this question as well:

> Property interests . . . are created and their dimensions are defined by existing rules and understandings that stem from *an independent source such as state law* — rules or understandings that secure certain benefits and that support claims of entitlement to those benefits.

408 U.S. at 577 (emphasis added). Specific state statutes and regulations are therefore prime sources of property rights in employment. *See, e.g., Robb v. City of Philadelphia*, 733 F.2d 286 (3d Cir. 1984) (court examined Pennsylvania's civil service

laws to determine whether plaintiff had property interest); *Perri v. Aytch*, 724 F.2d 362 (3d Cir. 1983); *Capua v. City of Plainfield*, 643 F.2d 1507, 1520 (D.N.J. 1986) (Sarokin, J.).

However, codified state law is not the only source of entitlement. For

> "property" interests subject to procedural due process protection are not limited by a few rigid, technical forms. Rather, "property" denotes a broad range of interests that are secured by "existing rules or understandings." A person's interest in a benefit is a "property" interest for due process purposes if there are such rules or mutually explicit understandings that support his claim of entitlement to the benefit and that he may invoke at a hearing.

Perry v. Sindermann, 408 U.S. 593, 601 (1972) (citations omitted). *See also Stana v. School-District of Pittsburgh*, 775 F.2d 122, 126 (3d Cir. 1985); *Anderson v. City of Philadelphia*, 845 F.2d 1216, 1221 (3d Cir. 1988).

Once an individual has found an arguable source for his or her property right to public employment, the court must carefully scrutinize that source to determine whether it actually confers an entitlement of the sort which may not be taken without due process. In this circuit, that inquiry must focus on the degree to which a state law, regulation, practice, or custom sets an objective standard for public employers to follow in making hiring, firing, promotion, or demotion decisions. *Anderson v. City of Philadelphia*, 845 F.2d 1216 (3d Cir. 1988). For example, if state law or practice permits job action to be taken only for cause,

that law or practice creates an entitlement to the job which forbids the state's deprivation of the job without a hearing. If, on the other hand, state law or practice supplies a state employer with considerable discretion in the firing or demotion decision, a court is much less likely to find a property right.

This discussion of the parameters of the law should make it clear that the case before the court is ripe for summary judgment. While the parties tell different stories about the events of October 7, 1984, in the Jersey City street outside the Foxes disco, they agree on the facts material to plaintiff's due process claim: the defendants changed plaintiff's duties and salary in 1980 from those of a patrolman to those of a detective. He performed his duties as detective satisfactorily until October 12, 1984, when defendant Harrison changed his duties and salary back to those of a patrolman. Harrison took this action without providing plaintiff an explanation, a hearing, or an opportunity to obtain counsel or confront his accusers. The only dispute is over whether the October 12 job action was a "demotion," as plaintiff contends, or a "reassignment," as defendants contend. Defendants concede that the disputed issue is one not of fact but of law.[3]

The dispute over whether the job action was a demotion or a reassignment is, at bottom, a dispute over the only issue that matters: did plaintiff have a legitimate claim of entitlement to his job as a detective? If he did, then the defendants violated his rights by demoting him to patrolman without a hearing, and plaintiff is entitled to summary judgment on the first count of

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3. See Defendants' Rule 12G Statement of Uncontested Facts, at para. 9: "these differences [over demotion and reassignment] are not factual differences, they are simply different characterizations of admitted facts for purposes of legal argument."

his complaint. If, on the other hand, plaintiff had no entitlement to his job as a detective, then the defendants were not obligated to provide him with any process prior to returning him to the patrolman position.

As stated above, the court must look to New Jersey law to determine whether plaintiff had a property interest in his detective position. N.J.S.A. 40A:14-147 provides that

> [e]xcept as otherwise provided by law, no permanent member or officer of the police department or force shall be removed from his office, employment or position *for political reasons or for any cause other than incapacity, misconduct, or disobedience of rules and regulations* established for the government of the police department and force, nor shall such member or officer be suspended, removed, fined or reduced in rank from or in office, employment, or position therein, *except for just cause as hereinbefore provided* and then only upon a written complaint setting forth the charge or charges against such member or officer.

This is exactly the sort of legal restraint on a public employer's job action discretion which this court and the Third Circuit have held to create property rights in public employment. *See Capua v. City of Plainfield*, 643 F.Supp. 1507, 1520 (D.N.J. 1986) (Sarokin, J.) (virtually identical New Jersey statute creates entitlement to public employment for fire fighters); *Robb v. City of Philadelphia*, 733 F.2d 286 (3d Cir. 1984); *Salerno v. O'Rourke*, 555 F.Supp. 750, 760 (D.N.J. 1983). The statute places severe restrictions on the ability of police officers' employers to take

action which affects the jobs of permanent members of the police force. The court therefore stands by the position it expressed in *Capua* that this statute creates a property interest in the jobs of permanent members of the police force.

The defendants do not appear to dispute that N.J.S.A. 40A:14-147 creates an entitlement in certain police officers for certain jobs. Rather, they argue that that statute creates nothing for plaintiff Redfield *in his job as detective.* They argue that the only permanent appointment plaintiff enjoyed was his original appointment, after success on a civil service examination, to his position as a patrolman. According to defendants, their 1980 adjustment of plaintiff's responsibilities and salary to those of a detective was nothing more than a temporary "reassignment," terminable at will. What plaintiff views as his 1984 "demotion" to patrolman was therefore nothing more than a termination of his temporary reassignment and a return to the only permanent position he had all along: patrolman.

For their characterization of the 1980 and 1984 job actions as "reassignments," the defendants rely heavily upon New Jersey's civil service laws. The defendants persuasively argue that those laws recognize a fundamental distinction between tenured, permanent employees, who have obtained their jobs as a result of successful performance on a civil service test and high placement on an eligibility list, and non-tenured, temporary employees, who have not passed such a test and have not been chosen from an eligibility list. *See generally* N.J.S.A. 11:1-1 *et seq.* The defendants rightly note that while plaintiff Redfield passed a test and was selected from an eligibility list for his patrolman position, his elevation to detective was preceded by neither the requisite test nor selection from a list. The defendants conclude their argument with *Jersey City v. Babula*, 56 N.J. Super. 533 (App. Div. 1959),

in which the Appellate Division upheld a determination by the Civil Service Commission that "in order for the appointment to the rank of detective to be permanent, it must be made from a list of eligibles established pursuant to a promotional examination." 56 N.J. Super. at 539.

The defendants' reliance on *Babula*, however, is misplaced, for they do not read the case in its entirety. The facts in *Babula* were essentially the same as those before the court. A large group of Jersey City patrolmen were promoted to detective, then "reassigned" to patrol duty upon the accession to power of a new local government. The court upheld the action, but, in a section of the opinion crucial to the issue before this court, noted that

> there was nothing in the nature of appellants' appointments to indicate they thereby succeeded to permanent assignments as detectives. . . . The personnel action forms, filed with the Department of Civil Service, reveal that the appellants had been merely "detailed" to serve as detectives. In one such form, the word "Promotion" was crossed out and the word "Detail" inserted in its place, as indicating the particular personnel action desired by the appointing authority. And the transitory nature of the assignment is further indicated by the notation on the form that additional compensation was provided by ordinance "when so detailed as a Detective." *Thus neither the police deparment nor the Civil Service Department ever approved these details as permanent positions, and nothing has been submitted on this appeal to impel us to a contrary conclusion.*

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56 N.J. Super. at 538.

Exactly the opposite is true in this case. Plaintiff was notified of his elevation to detective in 1980 by receipt of a "Personnel Action" form emblazoned across the top with the heading "Department of Civil Service Local Government Services." *See* Exhibit "A" to plaintiff's affidavit. At the top of the form, in the center, was typed "Promotion to Detective." Boxes on the form were checked for "Promotion." "Title Change," and "Salary Change." Most importantly, in the spot on the form where the appointing authority was required to indicate whether the appointment was "permanent," "provisional," or "temporary," the "permanent" box was checked. A certification by the appointing authority was signed, stating that "[c]ertification is hereby made that this appointment has been made in accordance with all legal requirements and that the position has been legally established in accordance with ordinance or resolution."

Unlike in *Babula*, then, the plaintiff's personnel action form clearly indicated that the promotion to detective was just that: a permanent promotion. Moreover, plaintiff's subjective understanding of his elevation to detective in 1980 conforms with the personnel form's clear meaning. The court thus finds uncontradicted evidence that both employer and employee understood the 1980 promotion to be a permanent appointment to the position of detective.

The Supreme Court has made clear that "[a] person's interest in a benefit is a 'property' interest for due process purposes if there are such rules or ***mutually explicit understandings*** that support his claim of entitlement to the benefit and that he may invoke at a hearing." *Perry v. Sindermann*, 408 U.S. at 601. The mutually explicit understanding of employer and employee in this

case was that plaintiff was a permanent detective. As such, he enjoyed a property interest in that position by virtue of N.J.S.A. 40A:14-147. The defendants deprived him of that interest without due process of law. Plaintiff is therefore entitled to summary judgment on the first count of his complaint.[4]

B. *Liberty Interest*

In his third cause of action, plaintiff alleges that

> [b]y demoting plaintiff, without due process of law guaranteed under the Fifth and Fourteenth Amendments to the United States Constitution, defendants denied plaintiff the opportunity to rebut all defamatory accusations against plaintiff, which have irreparably damaged his good name, reputation, honor and integrity. By reason thereof, Plaintiff has been damaged and seeks compensatory and punitive damages therefor.

Complaint, at para. 21. Under the law of this circuit,

> [a]n employment action implicates a fourteenth amendment liberty interest only if it (1) is based

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4. The court rejects the individual defendants' argument that they are entitled to qualified immunity from this suit. While it is true that government officials are entitled to qualified immunity from liability for damages if their conduct does not violate clearly established constitutional rights of which a reasonable person should have known, *Bennis v. Gable*, 823 F.2d 723 (3d Cir. 1987), the court concludes that the individual defendants should reasonably have recognized that their handling of plaintiff was unconstitutional. *Babula* is not new law; it is a case from 1959. The defendants therefore cannot claim that they could not have known that the civil service forms effected a permanent promotion of plaintiff, rather than a mere reassignment.

> on a "charge against [the individual] that might seriously damage his standing and associations in the community . . . , for example, that he had been guilty of dishonesty, or immorality" or (2) "impose[s] on him a stigma of other disability that forecloses his freedom to take advantage of other employment opportunities."

Robb v. City of Philadelphia, 733 F.2d at 294 (citations omitted). There is, however, an additional requirement: "a plaintiff must plead that the allegedly stigmatizing information was 'published' or otherwise disseminated by his government employer to the public." *Anderson v. City of Philadelphia*, 845 F.2d 1216, 1222 (3d Cir. 1988) (quoting *Chabal v. Reagan*, 841 F.2d 1216, 1223 (3d Cir. 1988)). *See also Bishop v. Wood*, 426 U.S. 341, 348 (1976); *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 547 n.13 (1985). The plaintiff must not only plead that the employer published the fact of his or her dismissal; the complaint must allege that the employer disseminated the *reasons* for the removal. *Chabal v. Reagan*, 841 F.2d at 1223; *Bishop v. Wood*, 426 U.S. at 341 (complaint "doomed" without allegation of reasons for dismissal).

Plaintiff's complaint, and indeed his supporting papers, are devoid of any allegation that any of the defendants disseminated the reasons for his demotion from detective to patrolman. Therefore, the complaint is, in the Supreme Court's language, "doomed" for failure to allege a cognizable deprivation of plaintiff's liberty interest in his good name. Defendants are entitled to summary judgment on the third count of the complaint.

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II. *Equal Protection*

In the second count of the complaint, plaintiff alleges that

> [b]y demoting plaintiff from his permanent position as a detective without providing him with notice of reasons or charges and without a fair and impartial hearing, defendants have acted in an unreasonable, arbitrary and capricious manner and have, thereby, deprived plaintiff of equal protection of the laws guaranteed under the Fifth and Fourteenth Amendments to the United States Constitution and 42 U.S.C. 1983. By reason thereof, Plaintiff has been damages [sic] and seeks compensatory damages therefor.

In his brief in support of his motion for summary judgment, however, the plaintiff nowhere mentions this count of the complaint. Nor do the defendants, cross-moving for summary judgment, address any argument to the equal protection claim. The court therefore denies both parties summary judgment, since each had the burden of demonstrating that it was entitled to judgment as a matter of law, and neither attempted to meet that burden.

s/ H. Lee Sarokin
H. LEE SAROKIN, U.S.D.J.

Date: July 29, 1988

Original to Clerk, U.S. District Court

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Copy to:

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Appendix B

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Civ. No. 86-3869

MICHAEL REDFIELD,

Plaintiff,

v.

CITY OF JERSEY CITY, et al.,

Defendants.

ORDER

This matter having been opened to the court on cross-motions of plaintiff and defendants for summary judgment, and the court having heard the argument of counsel and considered the submissions of the parties, and for the reasons expressed in the accompanying opinion and for good cause shown,

IT IS on this 29 day of July, 1988, hereby

ORDERED that plaintiff be and is granted summary judgment on the first count of his complaint, and it is further

ORDERED that defendants be and are granted summary judgment on the third count of plaintiff's complaint, and it is further

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ORDERED that the cross-motions of both parties for summary judgment on the second count of the complaint be and are denied.

s/ H. Lee Sarokin
H. LEE SAROKIN, U.S.D.J.

APPENDIX C — OPINION RECONSIDERING MOTION FOR SUMMARY JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY FILED JANUARY 23, 1989

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Civ. No. 86-3869

MICHAEL P. REDFIELD,

Plaintiff,

v.

CITY OF JERSEY CITY, a political subdivision, JERSEY CITY POLICE DEPT., and RICHARD HARRISON AND WALTER ADAMS, Directors of the Jersey City Police Department,

Defendants.

OPINION

SAROKIN, District Judge.

Before the court is defendants' motion for reconsideration of the court's order of July 29, 1988. After reconsideration, the court vacates its conclusion that plaintiff is entitled to summary judgment on Count One of his Complaint. The court also has reconsidered the issue of qualified immunity, and now concludes that defendants Harrison and Adams have properly asserted the defense. The court also grants defendants' motion for summary judgment on plaintiff's equal protection claim.

Appendix C

BACKGROUND

This is an action under 42 U.S.C. Sec. 1983 by Michael Redfield a police officer for the City of Jersey City. Defendants are the City of Jersey City, the Jersey City Police Department, and Richard Harrison and Walter Adams, the directors of the Jersey City Police Department. The lawsuit arises out of the defendants' change of plaintiff's job status in October 1984.

In April 1979, plaintiff joined the Jersey City Police Department and has been employed with the department ever since. In 1980, plaintiff was "promoted" or "re-assigned" to the position of detective in April of 1980. This change entailed a salary increase. Plaintiff performed off-duty uniformed security work to supplement his income. On October 7, 1984, plaintiff was working for a nightclub in Jersey City. That night, a fellow Jersey City police officer was involved in a fight outside the nightclub. The officer who had been involved in the fight accused plaintiff of failing to come to his aid and of being derelict in his duties. On October 11, 1984, defendant Police Director Harrison issued a directive "demoting" or "re-assigning" plaintiff from detective to patrolman and reducing his salary. The directive also transferred plaintiff to a new geographical division, which precluded any further off-duty work at the nightclub where the incident had occurred. Plaintiff was not afforded any type of hearing or opportunity in which to explain the events of October 7, 1984, nor did defendants offer any explanation for the job change.

On October 1, 1986, plaintiff filed this action. He made three claims: 1) defendants deprived him of property without due process (Count One); 2) defendants denied him equal protection under the laws (Count Two); and 3) defendants deprived him of liberty

without due process (Count Three).[1] Plaintiff and defendants cross-moved for summary judgment. In an opinion filed July 29, 1988, the court granted summary judgment in favor of plaintiff on his claim that he had been denied procedural due process with respect to his property interest in the position of detective. The court granted summary judgment in favor of defendants on plaintiff's claim that he had been deprived of a liberty interest without due process. The court denied both motions with respect to plaintiff's equal protection claim, since neither party had seriously pursued the issue. The court also rejected the individual defendants' argument that they are entitled to qualified immunity from this suit.

On August 17, 1988, individual defendants Harrison and Adams appealed to the United States Court of Appeals for the Third Circuit from the order of July 29, 1988 denying them the defense of qualified immunity. On November 7, 1988, defendants moved in this court for reargument, reconsideration, and for summary judgment in their favor on Count One. Defendants also renewed their motion for summary judgment. On January 11, 1989, the case was remanded to this court in accordance with the procedures outlined in *Venen v. Sweet*, 758 F.2d 117, 123 (3rd Cir. 1985).

In the July 29, 1988 opinion, this court reviewed the due process implications of a government employer's decision to terminate or otherwise change an employee's employment without a hearing. Under *Board of Regents v. Roth*, 408 U.S. 564, 576-77 a person seeking procedural due process must assert a legitimate

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1. The court's determination of Count Three was not raised by defendants' motion for reconsideration and will not be disturbed.

claim of entitlement to specific benefits that have already been acquired. Property interests are created and defined by "existing rules and understandings that stem from an independent source such as state law." *Id.* at 577. Codified state law is not the only source of entitlement, as determined by the Supreme Court in *Perry v. Sindermann*, 408 U.S. 593, 601. In *Perry*, the Court described property interests as arising out of "rules or mutually explicit understandings that support [a] claim of entitlement to the benefit and that [one] may invoke at a hearing." *Id.*

The opinion summarized defendants' argument as follows: Redfield's property interest was limited to his permanent appointment as a police officer, and did not encompass his elevation to the position of detective. The change in Redfield's position from patrolman to detective and the resultant increase in salary were nothing more than a temporary "reassignment," terminable at will. The court noted that defendants' argument is supported by New Jersey's civil service laws, which recognize a fundamental distinction between tenured, permanent employees, who have obtained their jobs pursuant to civil service procedures, and non-tenured, temporary employees. Redfield's elevation to detective was preceded by neither the requisite test nor selection from a certified list of eligible candidates. Most significantly, for the purposes of this motion for reconsideration, the opinion stated as follows:

The defendants conclude their argument with *Jersey City v. Babula*, 56 N.J. Super. 533 (App. Div. 1959), in which the Appellate Division upheld a determination by the Civil Service Commission that "in order for the appointment to the rank of detective to be permanent, it must be made from a list of eligibles established pursuant to a promotional examination." 56 N.J. Super. at 539.

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The defendants' reliance on *Babula*, however, is misplaced, for they do not read the case in its entirety. The facts in *Babula* were essentially the same as those before the court. A large group of Jersey City patrolmen were promoted to detective, then "reassigned" to patrol duty upon the access to power of a new local government. The court upheld the action, but, in a section of the opinion crucial to the issue before this court, noted that

> there was nothing in the nature of appellants' appointment to indicate they thereby succeeded to permanent assignments as detectives. . . . The personnal action forms, filed with the Department of Civil Service, reveal that the appellants had been merely "detailed" to serve as detectives. In one such form the word "Promotion" was crossed out and the word "Detail" inserted in its place, as indicating the particular personnel action desired by the appointing authority. And the transitory nature of the assignment is further indicated by the notation on the for that additional compensation was provided by ordinance "when so detailed as a Detective." Thus neither the police department nor the Civil Service Department ever approved these details as permanent positions, and nothing has been submitted on this appeal to impel us to a contrary conclusion.

56 N.J. Super. at 538.

Exactly the opposite is true in this case. Plaintiff was notified of his elevation to detective in 1980 by receipt of a "Personnel Action" form emblazoned across the top with the heading "Department of Civil Service Local Government Services." *See*

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Exhibit "A" to plaintiff's affidavit. At the top of the form, in the center, was typed "Promotion to Detective." Boxes on the form were checked for "Promotion," "Title Change," and "Salary Change." Most importantly, in the spot on the form where the appointing authority was required to indicate whether the appointment was "permanent," "provisional," or "temporary," the "permanent" box was checked. A certification by the appointing authority was signed, stating that "[c]ertification is hereby made that this appointment has been made in accordance with all legal requirements and that the position has been legally established in accordance with ordinance or resolution."

Unlike in *Babula*, then, the plaintiff's personnel action form clearly indicated that the promotion to detective was just that: a permanent promotion. Moreover, plaintiff's subjective understanding of his elevation to detective in 1980 conforms with the personnel form's clear meaning. The court thus finds uncontradicted evidence that both employer and employee understood the 1980 promotion to be a permanent appointment to the position of detective.

The Supreme Court has made clear that "[a] person's interest in a benefit is a 'property' interest for due process purposes if there are such rules or *mutually-explicit understandings* that support his claim of entitlement to the benefit and that he may invoke at a hearing." *Perry v. Sindermann*, 408 U.S. at 601. The mutually explicit understanding of employer and employee in this case was that plaintiff was a permanent detective. As such, he enjoyed a property interest in that position by virtue of N.J.S.A. 40A:14-147. The defendants deprived him of that interest without due process of law. Plaintiff is therefore entitled to summary judgment on the first count of his complaint.

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The opinion also included a footnote that stated as follows:

The court rejects the individual defendants' argument that they are entitled to qualified immunity from this suit. While it is true that government officials are entitled to qualified immunity from liability for damages if their conduct does not violate clearly established constitutional rights of which a reasonable person should have known, *Bennis v. Gable*, 823 F.2d 723 (3rd Cir. 1987), the court concludes that the individual defendants should reasonably have recognized that their handling of plaintiff was unconstitutional. *Babula* is not new law; it is a case from 1959. The defendants therefore cannot claim that they could not have known that the civil service forms effected a permanent promotion of plaintiff, rather than a mere reassignment.

In reaching its decision on both Count One and on the issue of qualified immunity, the court relied heavily on the *Babula* decision, particularly the significance of the personnel forms indicating that the promotion was permanent in Redfield's case. Defendants now urge reconsideration of the court's decision, based upon the recent discovery of two additional personnel forms and a related note from a representative of the New Jersey Department of Personnel.

Under General Rule 121, motions for reconsideration must be filed within 10 days of judgment. Defendants invoke F.R.C.P. 6(b)(2), which allows the court for cause shown to enlarge time within which motions must be filed. F.R.C.P. 60(b) authorizes motions for relief from a judgment or order on grounds of excusable neglect. Such motions must be made "within a reasonable" time, and not more than one year after the order is entered.

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Defendants' counsel represents that he discovered the three additional exhibits while preparing this case for appeal. Apparently, both parties relied upon personnel forms which were incomplete, containing only the top half of each form. This motion for reconsideration was filed approximately three months after the order was filed, well within the year limit in F.R.C.P. 60(b). Plaintiff argues that defendants' error does not constitute "excusable neglect," and that the motion is untimely.

The court accepts the representations of defendants' counsel that his attempt to correct the record is made in good faith. The court is satisfied that Rule 60(b) authorizes reconsideration and that such reconsideration is appropriate here. The court relied on the content of the personnel forms in reaching its earlier decision. Apparently, the copies of forms relating to Redfield's job changes that were relied upon by the court omitted an entire section. The copies of the forms now offered include additional opportunities to identify the job action as "permanent." Significantly, these additional spaces were not marked by state or city officials.

Defendants also offer the affidavits of two Jersey City officials, both of whom state that the box in the upper half of the form that was checked "permanent" refers to Redfield's appointment as a police officer only and not as a detective. (McGuire Affidavit, para. 4; Cottmon Affidavit, para. 4). The city officials state that the term "detective" refers simply to a work assignment, indistinguishable from the general term "police officer." (McGuire Affidavit, para. 3; Cottmon Affidavit, para. 4). Defendants offer an undated note from Marie Giordano, an employee of the New Jersey Department of Personnel, returning the form which had recorded Redfield's "demotion" and requesting that the form be corrected to read "assignment." (See

Exhibit to Cottmon Affidavit). Defendants submit the affidavit of Morris Farinella, the Regional Administrator of the Department of Personnel, who states that there is no job title for the position of detective under the civil service system. The State of New Jersey does not conduct examinations for the position of detective in municipal police departments and does not certify any person for permanent appointment as a detective. (Farinella Affidavit, paras. 2-3).

DISCUSSION

Based on the additional submissions to the record, defendants conclude that it is a factual and legal impossibility for plaintiff to ever have been appointed to a "permanent" detective position. The New Jersey Department of Personnel, which has filed an *amicus* brief, concurs in defendants' argument. The Department of Personnel, together with the Merit-System Board (formerly the Civil Service Commission), oversees and enforces the civil service system. The system was created to ensure that governmental appointments are made according to merit and fitness. N.J. Const. Art. VII, Sec. 1, para. 2 (1947); N.J.S.A. 11A:1-1 *et seq.* According to the Department of Personnel, a public employee can obtain permanent status in a job title only by passing a test for the title, being appointed from the resulting certification, and passing the five year working period of probation. Redfield did none of these prior to his job change to detective.

The Department cites several cases in which a person whose apparently permanent appointment was subsequently voided for failure to comply with civil service procedures. The Department emphasizes the decision in *Thomas v. McGrath*, 145 N.J. Super. 288 (App. Div. 1976), *rev'd*, 75 N.J. 372 (1978). In *Thomas*, a county prosecutor attempted to appoint plaintiff to the position

of "sergeant of county detectives." Although the prosecutor indicated on a personnel form that the appointment was permanent, he failed to notify the Department of Civil Service as required by statute. Shortly thereafter a new prosecutor took office. He appointed another candidate instead. The New Jersey Supreme Court adopted the opinion of Judge Morgan, who had dissented at the appellate level. Judge Morgan concluded that plaintiff had not obtained a permanent appointment because of the prosecutor's failure to obtain the Department's formal approval. The Department argues that Redfield has an even weaker claim to the position, since he has not taken a civil service test or obtained certification for the position of detective. The Department also makes a policy argument. To hold that a public employee may obtain permanent status in any way other than through civil service procedures, the Department warns, would undermine the merit-based civil service system.

Plaintiff maintains that his interest in the position of detective constitutes "property" such that due process applies. Plaintiff relies upon N.J.S.A. 40A:14-147, which prohibits demotions from rank unless just cause is shown, as well as New Jersey case law, provisions of the collective bargaining agreement governing the Jersey City police force, and the police department's internal rules and regulations. Plaintiff insists that "the rights of a detective, irrespective of Civil Service recognition, are absolutely protected." (Appellee's Brief, at 14).[2] Plaintiff contends that there was a mutual understanding among the parties, based upon established practice and policy within the Jersey City Police Department, that the job change was permanent.

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2. Both plaintiff and defendants have incorporated into their arguments briefs and exhibits submitted to the Court of Appeals.

Appendix C

Procedural Due Process.

In reconsidering the opinion and order of July 29, 1988, the court again finds that the Supreme Court's decisions in *Roth* and *Perry* provide the general parameters in deciding whether the interest asserted by Redfield constitutes "property" under the due process clause. In *Roth*, the plaintiff was hired to teach at a state university for a term of one year. After he was informed without explanation that his contract would not be renewed, Roth sued to require the university to state its reasons for nonrenewal and to afford him a hearing. The Supreme Court held that Roth had not been deprived of "property." The Court determined that his interest was based solely on the terms of his appointment as a university professor. Those terms secured his interest in employment until a specific date of termination, with no provision for renewal. The Court deemed it significant that there was "no state statute or University rule or policy that secured his interest in re-employment or that created any legitimate claim to it." 408 U.S. at 578.

In *Perry*, decided on the same day as *Roth*, a college professor raised a similar claim, with better results. In his tenth year of employment at a state college, under a succession of one-year contracts, Sindermann was notified that his contract would not be renewed. Unlike Roth, Sindermann alleged that his college had a *de facto* tenure program, and that he had gained tenure under that program. The Supreme Court found that an explicit contractual provision was not required to create a property interest. The Court observed that "agreements, though not formalized in writing, may be 'implied.' " The Court allowed that "there may be an unwritten 'common law' in a particular university that certain employees have the equivalent of tenure." *Id.* at 602. In the Court's view, a property interest may arise "if there are such rules

or mutually explicit understandings that support his claim of entitlement to the benefit and that he may invoke at a hearing." *Id.* at 601.

At the outset, this court deems it necessary to reconsider its "uncontradicted" finding that "both employer and employee understood the 1980 promotion to be a permanent appointment to the position of detective." (Opinion, at 12). The recent submission of complete personnel forms, together with the explanations offered by Jersey City personnel officials, makes clear that this finding is disputed. Accordingly, the court will vacate its earlier finding that the personnel forms, confirmed by plaintiff's subjective understanding, result in an uncontradicted finding of a permanent appointment. Instead, the court concludes that a genuine issue of fact has been presented as to this issue.

The court must now address defendants' argument that they are entitled to summary judgment in their favor on this claim. Defendants reiterate their arguments that plaintiff could not have been permanently appointed to the detective position because the New Jersey Department of Personnel does not recognize any such position. Even if such a position existed, defendants maintain, Redfield could not claim any entitlement to it because he did not obtain the position through the steps required by the civil service system. Defendants warn that a finding that Redfield obtained a permanent appointment without having gone through the required procedures would undermine the civil service system, harming those who have completed the certification process and who have not been chosen for permanent positions.

There is no question that the New Jersey Department of Personnel does not now recognize the position of detective as a permanent one. However, this fact does not end the court's

inquiry, for plaintiff may have other grounds upon which to base his claim that his interest in the position of detective constitutes "property." Plaintiff attempts to ground the interest in state decisional law which, in plaintiff's view, "unequivocally establish[es] 'detective' as a 'rank,' title,' or 'position,' which mandate[s] due process to one reduced in rank." (Appellee's Brief, at 11). The cases cited by plaintiff, however, do not support this claim.

The court in *D'Ippolito v. McGuire*, 33 N.J. Super. 477, 490 (App. Div. 1954) does not even mention the word "detective," holding only that a police officer may be suspended during an investigation of his suspected misconduct without formal charges being brought. The *Babula* decision affirmed a determination by the Civil Service Commission itself that "the position of 'detective' is a rank in Jersey City; that the rank of detective is a higher rank than that of patrolman and, by reason of the differential in pay, is a promotion." 56 N.J. Super. at 536.[3] However, the court concluded that "there was nothing in the nature of appellant's appointments to indicate they thereby succeeded to permanent assignments as detectives." *Id.* at 538. Plaintiff also relies upon *City Council of Garfield v. Perrapato*, 117 N.J. Super. 184, 194 (App. Div. 1971), in which the court predicted that "the separate position of detective, having been established by ordinance, will be recognized by the Civil Service Commission," relying upon *Babula*. However, the court went on to note that although the appointments were valid, they were only temporary, with permanent appointments contingent upon successful

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3. The position now taken by the Department of Personnel with respect to recognition of a separate detective position is inconsistent with its determination in *Babula* that a job change from patrolman to detective may constitute a promotion. Neither party has reconciled these conflicting positions.

completion of the civil service examination and the certification process. Thus, the state's case law is clear: to obtain a permanent appointment to a position recognized by the civil service system, a person must complete the civil service examination and certification procedures. Since Redfield did not complete such procedures prior to his job change to detective, he cannot base his asserted interest on the above line of cases.

The *Perry* decision may provide plaintiff with an adequate basis. In that case, the professor could not rely upon any state law creating or recognizing a specific right of tenure. He relied instead upon an official faculty guide referring to an informal commitment on the part of the university to a tenure principle. The guide stated as follows:

> **Teacher Tenure:** Odessa College has no tenure system. The Administration of the College wishes the faculty member to feel that he has permanent tenure as long as his teaching services are satisfactory and as long as he displays a cooperative attitude toward his co-workers and his superiors, and as long as he is happy in his work.

Sindermann also relied upon guidelines governing the university, which appeared to offer a person, like himself, with more than seven years of employment "some form of job tenure." 408 U.S. at 600. He offered to prove that a teacher with his employment history was entitled to a procedural due process right to a statement of reasons and a hearing before being released from employment. The Supreme Court held that he "must be given an opportunity to prove the legitimacy of his claim of such entitlement in light of 'the policies and practices of the institution.' " 408 U.S. at 603 (citation omitted).

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Redfield argues that the policies and practices of the Jersey City Police Department were such that there was an implied understanding that he would be afforded at least a statement of reasons prior to any reduction from his position as detective. He points to the department's internal rules and regulations, which state:

> Any permanently employed officer or employee who receives a fixed annual salary from the municipality shall not be suspended, removed, fined *or reduced from office or employment* therein except for just cause and then only after written charges and complaint shall have been preferred.

(Appellee's Brief, at 26a) (emphasis added). Plaintiff also points to the following provision of the Department's collective bargaining agreement:

> No Police Officer shall be discharged, disciplined, reprimanded, *reduced in rank, compensation, position,* or deprived of any employment advantage or given an adverse evaluation of his service without just cause. Any such actions asserted by the City, or any agent or representative thereof, shall be subject to the grievance procedure herein set forth, including binding grievance arbitration. Grievants shall elect arbitration or pursuit of civil service remedies but not both.

(Appellee's Brief, at 27a) (emphasis added).

The parties dispute whether and to what extent these provisions represented established custom or policy. Defendants'

counsel represented at oral argument that the Department has never given a hearing to a police officer who has been reassigned from detective to patrolman. Defendants argue that it is the Department's custom and practice to assign and reassign police officers to the position of detective and patrolman on a regular basis, without any understanding that such assignments are permanent.

Drawing inferences in favor of the non-moving party, *see Tigg Corp. v. Dow Corning Corp.*, 822 F.2d 358, 361 (3rd Cir. 1987), the court is unable to determine whether these provisions reflected actual practice and policy in the Jersey City Police Department. These provisions may fairly be read as creating an entitlement to continued employment, ensuring that a police officer may not be reduced in rank or compensation absent cause. This entitlement is, however, ultimately a matter of state law. *Bishop v. Wood*, 426 U.S. 341, 345 (1976).

It is clear that, under New Jersey law, a course of dealing may result in an implied contract. *Raul Intern. Corp. v. Sealed Power Corp.*, 586 F.Supp. 349, 359 (D.N.J. 1984) (Sarokin J.); *Kozlowski v. Kozlowski*, 164 N.J. Super. 162, 174 (Ch. Div. 1978), *aff'd*, 80 N.J. 378 (1979). Plaintiff's assignment to the detective position entailed a salary increase, along with other emoluments. There is nothing to indicate that the assignment was provisional. Indeed, Redfield asserts that he had been assigned as a provisional detective on several prior occasions, without any increase in benefits. The increase in salary provides support for plaintiff's argument that the assignment was a promotion. *See City Council of Garfield v. Perrapato*, 117 N.J. Super. at 193 (salary increase accompanying assignment to detective position indicates job change was in the nature of a promotion). Defendants concede

that many persons within the Jersey City Police Department referred to assignments to the detective position as promotions.

The course of dealing would include the length of his service as a detective. Redfield had been serving as a detective, and receiving an increased salary, for more than four years before he was reduced in position. Although this four years of service is not dispositive on the nature of the understanding between employer and employee, it serves to distinguish cases such as *Thomas v. McGrath, supra,* in which the plaintiff never actually received the benefits of the higher position.

The record does not yet resolve the dispute between the parties as to their course of dealing and their mutual understanding of the nature of plaintiff's interest in the position of detective. Plaintiff has offered objective evidence — a salary increase, provisions of the collective bargaining agreement, and internal departmental rules — sufficient to overcome defendants' motion for summary judgment on Count One. The nature of the understanding between plaintiff and defendants, specifically whether that understanding rose to the level of an implied contract, is one to be determined at trial.

Defendants have established that Redfield's interest in the position of detective did not extend to an interest recognized or protected by the New Jersey Department of Personnel and civil service laws. Under the Supreme Court's holding in *Perry*, if it is the law of New Jersey that a police officer in Redfield's position has no contractual or other claim to job tenure, his claim would be defeated as a matter of law. 408 U.S. at 602, n. 7. Under *Perry*, plaintiff must show that the police department's alleged practices and policies are valid and do not conflict with state law. *See, e.g., Genesco Entertainment v. Koch*, 593 F. Supp. 743 (S.D.N.Y.

1986) (Weinfeld, J.) (mutual understanding and custom cannot create a property interest for due process purposes if they are contrary to express provision of statute or regulation).

It is clear and indeed undisputed that plaintiff is not a "permanent" employee as a detective under state law. State law does not now recognize such a position and accordingly, plaintiff has not qualified for it by virtue of existing state law. Defendants have not offered any express provision of state law that prohibits the practice as alleged by plaintiff. Rather, defendants and the state-intervenor argue that to require that plaintiff be accorded procedural due process in connection with his return to the designation of patrolman contravenes state policy since it confers permanent status upon a position not recognized or approved as such by the civil service. It is argued that plaintiff and others who have been designated "detective" will thus be accorded permanent status and all of the rights incident thereto. The court disagrees. No such broad conclusion is warranted or necessitated.

The court concludes that plaintiff should be allowed to establish at trial that, based upon custom and practice, as well as existing regulations and agreements, those appointed as detectives in the Jersey City Police Department considered the designation to be a promotion carrying with it certain benefits, prestige and expectations. Among those expectations may have been the understanding that loss of the designation of detective for purported disciplinary purposes would entitle the individual involved to a hearing. It does not necessarily follow that all rights and benefits to which the plaintiff would be entitled under a recognized civil service classification necessarily must be accorded to plaintiff. He is not a permanent employee for civil service purposes. His property right may be sufficient, however, to require a hearing before he can be deprived of it.

Appendix C

The characterization of the personnel action as a "promotion" or "reassignment" is not dispositive. The designation may have conferred a property right, by reason of the conduct of the employer. Withdrawal or reduction of that right may entitle the plaintiff to a hearing where the alleged basis is some misconduct on the part of the employee. The dire consequences of such a conclusion as predicted by the defendants do not necessarily follow and are not encompassed or intended by this opinion.

In sum, state law does not recognize the permanent designation of persons as detectives, because the position of detective does not exist under state law. However, state law does not prohibit granting a hearing to such persons if local practice has created such an entitlement based on the benefits entailed by such designation.

Qualified Immunity.

As this lengthy opinion indicates, the question presented is difficult and not easily resolved by following clear precedent. Indeed, the court is mindful that other courts have held that personnel decisions short of termination do not constitute a deprivation of a property interest under the due process clause. *See Wargat v. Long*, 590 F.Supp. 1213, 1215 (D. Conn. 1984); *see also Brown v. Brienen*, 722 F.2d 360, 364-365 (7th Cir. 1983). As such, the issue lends itself to conflicting conclusions reached in good faith. Therefore, individual defendants Harrison and Adams are entitled to the defense of qualified immunity under *Harlow v. Fitzgerald*, 457 U.S. 800 (1982), *Mitchell v. Forsyth*, 472 U.S. 511 (1985), and *Anderson v. Creighton*, ____ U.S. ____, 107 S.Ct. 3034 (1987).

Appendix C

Equal Protection.

Defendants renew their motion for summary judgment, this time supported by legal argument. Defendants argue that plaintiff has not alleged or established that any city policy invidiously discriminated against him. Defendants contend that the issues presented in this case are not related in any way to a suspect classification; plaintiff therefore has improperly invoked the equal protection clause.

The court agrees. Plaintiff does not suggest that defendants created a suspect classification. Plaintiff therefore bears the burden of showing that the defendants' actions "so lack rationality that they constitute a constitutionally impermissible denial of equal protection." *Rogin v. Bensalem Township*, 616 F.2d 680, 688 (3rd Cir. 1980), *cert. denied*, 450 U.S. 1029 (1981). Plaintiff does not even attempt to meet this burden. Accordingly, defendants are entitled to summary judgment in their favor on this claim. *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986).

CONCLUSION

Upon reconsideration, the court vacates its earlier order granting summary judgment in favor of plaintiff on Count One. The court finds that neither party is entitled to summary judgment and that the case should proceed to trial to establish whether the custom and practice of the Jersey City Police Department was such that plaintiff obtained a property interest in the position of detective sufficient to entitle him to a due process hearing in the event he was returned to the status of patrolman. The court has reconsidered its prior determination with respect to qualified immunity. Individual defendants Harrison and Adams are entitled

to such immunity in this case. The court also grants summary judgment in favor of defendants on the issue of equal protection.

s/ H. Lee Sarokin
H. LEE SAROKIN, U.S.D.J.

Date: January 23, 1989

Original to Clerk, U.S. District Court

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Appendix C

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Civ. No. 86-3869

MICHAEL P. REDFIELD,

Plaintiff,

v.

CITY OF JERSEY CITY, a political subdivision, JERSEY CITY POLICE DEPT., and RICHARD HARRISON AND WALTER ADAMS, Directors of the Jersey City Police Department,

Defendants.

ORDER

This matter having been opened to the court by counsel for defendants; and the court having considered the papers, including those submitted by the New Jersey Department of Personnel as *amicus curiae*; and having heard oral argument of counsel, and for the reasons expressed in the accompanying opinion and for good cause shown;

IT IS on this 23 day of January, 1989;

ORDERED that defendants' motion for reconsideration and reargument is hereby granted, and it is further

ORDERED that the cross-motions for summary judgment on the first count of the complaint be and are denied, and it is further

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ORDERED that defendants be and are granted summary judgment on the second count of the complaint, and it is further

ORDERED that individual defendants Harrison and Adams are entitled to qualified immunity from this action.

The court is of the opinion that the disposition of Count One involves a controlling question of constitutional law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation.

s/ H. Lee Sarokin
H. LEE SAROKIN, U.S.D.J.

APPENDIX D — ORDER AND JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY FILED OCTOBER 24, 1990

SHULMAN & WALL, ESQS.
115 RIVER ROAD
EDGEWATER, NEW JERSEY 07020
(201) 941-9000
ATTORNEY FOR PLAINTIFF

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Docket No. 86-3869 (H.L.S.)

CIVIL ACTION

Plaintiff,

MICHAEL J. REDFIELD

v.

CITY OF JERSEY CITY, et als.

Defendants.

ORDER AND JUDGMENT

This matter came on for trial before the Court and jury, Honorable H. Lee Sarokin, District Judge Presiding, William Z. Shulman, Esq., Shulman & Wall, attorneys for plaintiff, Martin R. Pachman, Esq., attorney for defendant, and the issues having been duly tried and the jury having duly rendered its verdict and the jury having found that the plaintiff was wrongfully discharged

and demoted without due process of law in violation of 42 U.S.C. Sec. 1983, and having returned a verdict in favor of plaintiff for damages against the defendant City of Jersey City, and for good cause appearing,

It is on this 24th day of October, 1990

1. ORDERED AND ADJUDGED that judgment be and hereby is entered in favor of plaintiff Michael Redfield against the defendant City of Jersey City in the amount of five hundred and fifty thousand ($550,000) dollars together with interest thereon from the date of the filing of the complaint October 2, 1986, through September 24, 1990 in the amount of one hundred fifty seven thousand eight hundred nineteen dollars and eighty six cents ($157,819.86) for a total of seven hundred seven thousand eight hundred nineteen dollars and eighty six cents (707,819.86) together with costs of action taxed by the Court in the amount of $1,878.20 pursuant to R:54(d) and 28 U.S.C. § 1920; and it is further

2. ORDERED AND ADJUDGED that pursuant to Gen. Rule 46 plaintiff shall file with the Court by affidavit plaintiff's application for counsel fees and costs pursuant to 42 U.S.C. § 1983, 1988 within thirty (30) days and defendant shall file responsive papers within 15 days, and it is further

3. ORDERED that a copy of this order shall be served upon all parties within five (5) days.

s/ H. Lee Sarokin
HONORABLE H. LEE SAROKIN
UNITED STATES DISTRICT JUDGE

APPENDIX E — OPINION DENYING JUDGMENT N.O.V. OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY FILED NOVEMBER 13, 1990

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Civ. No. 86-3869

MICHAEL J. REDFIELD,

Plaintiff,

v.

CITY OF JERSEY CITY, a political subdivision, JERSEY CITY POLICE DEPT., and RICHARD HARRISON and WALTER ADAMS, Directors of the Jersey City Police Department,

Defendants.

OPINION

Sarokin, District Judge.

Before the court is defendant's motion for judgment notwithstanding the verdict.

Background

This is an action under 42 U.S.C. § 1983 by Michael Redfield, a police officer in Jersey City. Defendant is the City of Jersey City. The lawsuit arises out of defendant's action in changing Plaintiff's job status in October 1984.

Appendix E

In April 1970, plaintiff joined the Jersey City Police Department, In April 1980, plaintiff was "promoted" or "reassigned" to the position of detective. The change entailed a salary increase and new duties. Plaintiff performed off-duty uniformed security work to supplement his income. On October 7, 1984, plaintiff was working for a night club in Jersey City. That night, a fellow Jersey City police officer was involved in a fight outside the nightclub. The officer who had been involved in the fight accused plaintiff of failing to come to his aid and of being derelict in his duties in refusing to arrest persons involved in the fight. On October 11, 1984, Police Director Harrison issued a directive "demoting" or "re-assigning" plaintiff from detective to patrolman and reducing his salary. The directive also transferred plaintiff to a new geographical division, which precluded any off-duty work at the night club where the incident had occurred. Plaintiff was not afforded a hearing in which to explain the events of October 7, 1984, nor did defendant offer any explanation of the job change. No specific charges were filed against him.

On October 1, 1986 plaintiff filed this action, claiming that defendant had deprived him of property and liberty without due process of law and denied him equal protection under the law. On July 29, 1988 and January 23, 1989, the court granted defendant's motion for summary judgment as to defendants Harrison and Adams, directors of the Jersey City Police Department, based upon the defense of qualified immunity, as well as to plaintiff's liberty interest and equal protection claims. The issue of whether, based upon custom and practice, as well as existing regulations and agreements, those appointed as detectives in the Jersey City police department considered the designation to be a promotion carrying with it certain benefits, prestige and expectations, was submitted to the jury. The jury

found in favor of plaintiff and awarded plaintiff damages in the amount of $550,000. Defendant then moved for a judgment n.o.v.

Discussion

The evidence in this matter clearly demonstrated that the plaintiff's career and reputation were destroyed by a false accusation made against him by a fellow officer which accusation was confirmed by the Police Department in stripping plaintiff of his rank as detective and reassigning him to the position of police officer.

The charge made and implicitly adopted by the Department was that plaintiff failed to come to the aid of a fellow officer in danger. Whereas, as in most cases, the court would defer to a jury finding on such an issue, in this instance there is no need to do so. There was *no evidence whatsoever* that plaintiff failed to come to the aid of a fellow officer.

As the trial progressed the charge against plaintiff was reduced to his failure to arrest certain individuals with whom the fellow officer, while off duty, was engaged in a drunken brawl, or to investigate the matter further.[1] But even the complaining officer did not testify about plaintiff's failure to come to his aid, and indeed, testified to the contrary.

The harassment and ridicule which followed and eventually destroyed plaintiff was a direct and foreseeable consequence of the disciplinary action taken. It clearly could have been viewed

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1. The City's change in position demonstrates the rationale and need for the specification of charges in this type of proceeding.

by members of the force as confirmation of plaintiff's failure to aid a fellow officer — admittedly one of the most egregious acts which an officer can commit in the eyes of his colleagues.

Had there been charges, a hearing and the facts adduced as they were at this trial, it is inconceivable that plaintiff would have suffered the humiliation and disgrace which he ultimately endured. For reasons that were never adequately explained, the Department, without a hearing, accepted the word of an officer with a reputation for drinking, who was drunk and fighting while off-duty when the incident occurred against the word of plaintiff, a respected, dedicated and frequently commended police officer who had been promoted to detective.

As a result plaintiff's career and reputation were destroyed and his daily life subjected to harassment and humiliation, which eventually affected his relations with friends and family as well. Considering the gravity and scope of the devastation upon his life, the verdict was clearly justified, fair and reasonable. The jury's findings as to both liability and damages were fully supported and warranted by the evidence presented.

As to the question of whether the position of detective was separate and apart from that of a police officer requiring a hearing for its removal, the court finds as a matter of both fact and law that the position was separate, that plaintiff's change in position was a promotion to detective, and that his return to patrolman was a demotion.

Ordinarily, the issue of whether a plaintiff had a property interest in a position of public employment is a pure question of law. *See Clark v. Falls*, 890 F.2d 611, 617 (3d Cir. 1989); *Cohen v. Bd. of Trustees*, 867 F.2d 1455, 1468 (3d Cir. 1989). However,

in its opinion of January 1989, the court found that a fact question existed with regard to whether plaintiff had a property interest in his job as a detective. The court ruled that New Jersey law did not explicitly grant plaintiff a property interest in his position as detective, but found a genuine issue of material fact as to whether there was a "mutually explicit understanding[]" regarding Redfield's interest in his post. *See Perry v. Sindermann*, 408 U.S. 593, 601 (1972).

The court's decision left to the jury the determination of whether there was either a mutually held understanding or custom (an implied contract) that plaintiff could not be transferred from his position as a detective without a showing of cause. *Redfield v. Jersey City*, slip op., at 19-20 (January 23, 1990). As part of its verdict, the jury implicitly found that both Redfield and the City understood that Jersey City detectives held a position separate and apart from patrolman. The plaintiff was afforded a salary increase and a special badge when he was promoted to detective. His duties and responsibilities were different. Plaintiff's removal from the position of detective was designated as a "demotion."

Defendant contends that it was and is for the court to make the determination of whether or not plaintiff had a property interest in the position of detective sufficient to require a hearing before he could be deprived of such a position. The court now does so, and concurs with the jury finding that such property interest existed.

A constitutionally protected property interest may be grounded in custom or a mutual understanding. *See Perry*, 408 U.S. at 601; *Stana v. School Dist.*, 775 F.2d 122, 126 (3d Cir. 1985) ("Property interests . . . can also arise from written or unwritten state or local government policies or from 'mutually

explicit understandings' between a government employer and employee") (citations omitted). Further, the existence of a property interest "must be decided by reference to state law." *See Bishop v. Wood*, 426 U.S. 341, 344 (1976). There is an ample basis in New Jersey law supporting plaintiff's assertion of a property interest. First, it is amply established that a course of dealing may give rise to an implied contract. *See St. Paul Fire & Marine Ins. Co. v. Indemnity Ins. Co.*, 32 N.J. 17, 24-26 (1960); *Kozlowski v. Kozlowski*, 164 N.J. Super. 162, 174 (Ch. Div. 1978), *aff'd*, 80 N.J. 378 (1979). Furthermore, New Jersey recognizes implied contracts, oral or written promises made by employers to employees, as binding. *See Woolley v. Hoffmann-La Roche, Inc.*, 99 N.J. 284, *modified*, 101 N.J. 10 (1985). Finally, the existence of an articulated departmental policy, such as the policy of promotion to and retention at the rank of detective found by the jury in this case, provides a sufficient state law basis for a property interest. *See Stana*, 775 F.2d at 126-27 & n.3 (teacher had entitlement in classification on eligibility list where place on list was "the central factor in the School District's communicated policy to award teaching positions").

Thus the jury's implicit finding that plaintiff had a mutually understood entitlement in his position is adequately supported as a matter of law under any of these three related theories. The court has made an independent finding of both fact and law that plaintiff had a property interest in the position of detective which required a hearing before he could be returned to the position of patrolman.

Since plaintiff's interest in the position of detective was a property interest, he should not have been deprived of the position without a prior hearing. *Board of Regents v. Roth*, 408 U.S. 564 (1972). To support his claim, plaintiff relies on the constitutional

requirements of due process, as well as N.J.S.A. 40A:14-147, which prohibits demotions for police officers without a hearing, New Jersey case law, provisions of the collective bargaining agreement, and Jersey City Rules and Regulations. Defendant argues that in the instant case no hearing was necessary. Defendant claims that plaintiff had the opportunity to present his version of the facts in reports he was asked to submit, and subsequently could have challenged Director Harrison's actions.

In *Mathews v. Eldridge*, 424 U.S. 319 (1976), the Supreme Court set forth the following factors, which must be weighed to determine what procedural protections the Constitution requires in a particular case:

> "First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail."

Id. at 335. Applying this test, the Court generally has held that the Constitution requires some kind of hearing before the state deprives a person of liberty or property. *Zinermon v. Burch*, 110 S. Ct. 975, 984 (1990) (citations omitted).[2] Indeed, in the instant

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2. Defendant cites *Cleveland Board of Educ. v. Loudermill*, 470 U.S. 532 (1985), to support its claim that a predeprivation hearing was not necessary in the instant case. However, in *Loudermill*, the Supreme Court held that while

(Cont'd)

case, plaintiff's interest was weighty, both the risk of erroneous deprivation through the procedures used and the value of a predeprivation hearing were great, and the additional burden to the Department small.

The Court in *Parratt v. Taylor*, 451 U.S. 527 (1981), *overruled in part, not relevant here, by Daniels v. Williams*, 474 U.S. 327, 330-331 (1986), established a rule that represents a special case of the *Mathews* analysis, where postdeprivation tort remedies are all the process that is due, simply because they are the only remedies the state could be expected to provide. *See Zinermon*, 110 S. Ct. at 985. In *Parrat*, the Court held that a deprivation of a constitutionally protected property interest caused by a state employee's random, unauthorized conduct only gives rise to a § 1983 procedural due process claim where the state fails to provide an adequate postdeprivation remedy. In the instant case, defendant concedes that "the deprivation which (plaintiff alleges here was not random, but authorized after careful inquiry by the Police Director." Defendant's Brief, at 23. As in *Zinermon*, the Department's actions here do not fall under the *Parrat* rule because the deprivation of plaintiff's property interest was not unpredictable, predeprivation process was not impossible, and defendant's actions were neither random nor unauthorized. 110 S. Ct. at 989-990.

The court finds that plaintiff should have been awarded a hearing before his "reassignment" or "demotion" to officer. *See Farley v. North Bergen Township Bd. of Educ.*, 705 F. Supp.

(Cont'd)

the pretermination hearing need not be elaborate, it is necessary. *Id.* at 545. Thus, the Court in *Zinermon* makes reference to the requirement that there be "some kind of hearing." 110 S. Ct. at 984.

Appendix E

223, 227 (D.N.J. 1989) (where transfer of school principal was not random and unauthorized act but act of Board in its official capacity, "there was no reason why the Board could not conduct a hearing . . . .").

Conclusion

For the foregoing reasons, defendant's motion for a judgment n.o.v. is denied.

s/ H. Lee Sarokin
H. LEE SAROKIN, U.S.D.J.

Date November 13, 1990
Original to Clerk, U.S. District Court

Copies to:
Hon. Ronald J. Hedges, U.S. Magistrate

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Appendix E

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Civil Action No. 86-3869

MICHAEL J. REDFIELD,

Plaintiff,

v.

CITY OF JERSEY CITY, a political subdivision, JERSEY CITY POLICE DEPT., and RICHARD HARRISON and WALTER ADAMS, Directors of the Jersey City Police Department,

Defendants.

ORDER

This matter having been opened to the court by defendants' motion for a judgment notwithstanding the verdict; and the court having reviewed the papers and heard oral argument; and for the reasons set forth in the accompanying opinion; and for good cause shown,

IT IS this 13 day of November, 1990, hereby

ORDERED that defendants' motion for j.n.o.v. is denied.

s/ H. Lee Sarokin
H. LEE SAROKIN, U.S.D.J.

APPENDIX F — EXCERPTS OF TRANSCRIPTS RELATING TO REDFIELD TESTIMONY; MOTION FOR DIRECTED VERDICT; JURY INSTRUCTIONS; VERDICT

Redfield - direct

[2.146] Q. Did anybody give you an opportunity to have a lawyer and to have a hearing like it says in the collective bargaining agreement, two superior officers and selection of a third member? A. No, sir.

Q. Did you ask for any of that? A. Yes, sir.

Q. Tell us this process. Who did you ask? A. First of all, I went to the union representative, Mr. Buonocore at the time.

I wanted him to go to the director and ask for a hearing or trial or see what this was all about, since nobody wanted to speak to me in the supervisory capacity about the incident.

I told him, you know, that I don't think I was at fault.

He said, okay, he will get back to me.

By the way I called the union office before I went to the west District, and I received no answer, no return. So I was off duty when I got police Officer Buonocore who was a union representative at the time in front of the North District, and I asked him to go to the director's office and ask him why.

Q. And did you have any subsequent conversations with Officer Buonocore? [2.147] A. Yes. About a week later — he never called me back. I had to hunt him down. He said it was departmental prerogative — administrative prerogative.

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Q. What did you tell him when he said that to you? A. I said, "I don't believe it. Do I get a trial or do I get a hearing?"

He said — he said nothing else. He said, "It is their prerogative."

Q. Was there any conversation that this prerogative was exercised in connection with what happened at Foxes? A. I told him what happened, you know, my side of it, that he went to the director's office with it.

Q. Did you have any other conversations with Officer Buonocore? A. No, only those two at the time.

Q. Did there come a later time when you reached out to get the union, anybody else to help? A. Yes. I went to the union lawyer.

Q. Do you remember when in time it was? A. No, I don't. I know it was after I spoke with Buonocore.

Q. And do you remember if you gave them any documents? A. I gave them a copy — I gave George Tate a copy.

Q. Of your report? A. Four-page report, right.

Redfield - cross

[3.74] attention to section six thereof.

In fact, he had you read the first sentence of that into the record. A. 22?

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Q. Page 29 of the labor agreement, top of the page? A. (No response.)

Q. Do you remember reading that? A. Article XXIX. Yes.

Q. Having read the first sentence into the record yesterday, would you read the second sentence this morning out loud? A. "Any such actions asserted by the City or any agent or representative thereof shall be subject to the grievance procedure herein set forth, including binding grievance arbitration. Grievants shall elect arbitration or pursuit of civil service remedies, but not both."

Q. Did you ever file a grievance? A. Don't know what you mean by grievance. Not talking about a grievance — no, I didn't file a grievance, grievance, if that is what you mean.

Q. You testified yesterday that you went to Mr. Buonocore. Was Mr. Buonocore at that a time an official of the City of Jersey City? A. Union representative.

Q. Not an official of the City. He was the president of [3.75] the police union, isn't that correct? A. Yes, sir.

Q. And whatever Mr. Buonocore did -- in fact, you testified that he came back to you and told you that he was nothing — there was nothing he could do for you, because assignment as detective was an administerial prerogative, isn't that what he said? A. That is right.

Q. And he was the president of the union, right? A. That is right.

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Q. Do you know for how long he had been the president of the union at that point? A. No.

Q. A number of years though? A. Yes, sir.

Q. Do you know if he was the one who — strike it.

Did you ever attend a meeting when a union representative presented ita labor contract to the membership to tell the guys what they got? A. Yes.

Q. Was Mr. Buonocore one of the people who made that presentation? A. Yes.

Q. Do you know whether or not he was the person who participated in negotiating the labor agreement? [3.76] A. No, I don't.

Q. I ask you to look at the last page where there is an unsigned signature block.

Whose name appears there on behalf of the union? A. Ron Buonocore.

Q. And Mr. Buonocore, the president of the union, the designated person who would sign the contract or perhaps did, told you that assignments or reassignmont to detective was a managerial prerogative. Is that correct? A. Never said it. He said demotion was a managerial prerogative.

Q. The demotion was a managerial prerogative? A. That I had no — okay.

Q. That you had no recourse? A. Right.

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Q. Now, you had used a grievance procedure before, didn't you? A. I believe when I wanted to work other details, yes.

Q. Are you familiar with the fact that an individual could file a grievance under this grievance procedure in this labor agreement? A. No.

Q. Well, let's go back to page 25. You just read section six of the grievance procedure.

I am not going to ask you to read it all into the

[5.26] your Honor's ruling to submit it.

I therefore reguest that all such testimony be stricken from the record, and that the jury be instructed to disregard it.

THE COURT: Any problem with that?

MR. SHULMAH: No. I think there was one testimony about the incident with the car, but if I am not mistaken, do I recall yesterday Mr. Redfield's son mentioned there was some incident with the car?

THE COURT: Well, but the incident with —

MR. SHULMAN: Hospital?

THE COURT: — his wife stopped by the police, the jury will disregard it.

MR. SHULMAN: Yes. No problem.

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THE COURT: Ladies and gentlemen, you heard some objections to hearsay, and there was an incident that Mr. Redfield related that happened to his wife, and you should just totally ignore it and disregard it because she has not confirmed it by her own testimony.

MR. PACHMAN: May we approach the bench?

(The following takes place at side bar.)

MR. PACHMAN: I want to make my motion for a directed verdict based on the failure of the plaintiff to prove by preponderance of the evidence on the custom and practice either, (a), that there was a property interest [5.27] that Mr. Redfield could use as a basis for this case and/or (b), that under the legal cases that are recited in the previous memorandum, that he has sufficient opportunity to be heard, and opportunity for postactionable or postaction hearing that he — apparently he did not avail himself of, to merit dismissal of this case.

THE COURT: All right.

MR. PACHMAN: I want to the let you know, and I didn't want to do it in front of the jury.

THE COURT: The record indicates the appropriate motion has been made.

I will reserve on it until the end of the defendant's case. There are some critical issues we have to discuss.

MR. SHULMAN: Your Honor, if the Court please, I believe that the defense has a witness ready.

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THE COURT: I hope so.

MR. SHULMAN: That is Bollhardt?

MR. PACHMAN: Yes.

MR. SHULMAN: For the record, in the opening statement, at the time that the witness list was presented to the jury, Mr. Bollhardt's name was not mentioned as a possible witness for the defense, and therefore, I move that he should not be permitted to render testimony on that basis.

[7.26] discovered subsequent to the filing of this lawsuit after you were out of office? A. No, I never had any knowledge of that myself, no.

Q. Did he ever file a grievance with regard to anything like that, to your knowledge, he being Redfield? A. Not to my knowledge, no.

Q. Did he ever file a grievance alleging that he had been denied the right to work off duty in his new assignment in the West District? A. I don't think so, no.

Q. Now, earlier in your testimony you indicated that one of the things that would happen when you filed — when you reassigned an officer, would be some civil service type forms that would have to be dealt with. Is that correct? A. Yes.

Q. I would like to show you Defendant's Exhibit number 7 and ask if you can identify that, particularly see your signature thereabout the middle of the page, if the jurors would care to turn to it.

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THE COURT: What is it, D-7?

MR. PACHMAN: D-7.

THE COURT: Jury may turn to it.

Q. Can you tell us what that form is please? A. This is what is called, I believe, a CS-6 form. It's a civil service form which you send down to Trenton, if any [7.27] change is made in a person's status, if they went from part-time to full-time, any type of change that takes place, they have to be notified of in civil service, and it's usually signed off in this case by myself, personnel officer for the City and the Business Administrator's office.

Q. Can you tell us what date you signed — strike it.

Could you move to Defendant's Exhibit number 8, please, which is the next page?

Can you tell us what that is, if you know, if you have seen it? A. This is a copy, I guess with a note attached, this was sent back to the department advising us to refile another CS-6 form, a corrected version.

Q. Do you know from whom that note came? I don't mean the individual person, but do you know if that person was a City employee or State employee? A. No. I believe the person would be a civil service state employee sending this back to the City, Isabel Spence, Ms. Spence, so came from state civil service back to Jersey City personnel, so Ms. Giordano would have been from the State, and Ms. Spence is from Jersey City.

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Q. Would you flip to Defendant's Exhibit number 9, please, and could you tell us what that is? A. This would have been the corrected version of the original CS-6 form. There is a change in what they asked to [7.28] do in eight. They said, Shouldn't be noted, the way it was noted in the original CS-6 form was noted as a demotion.

They said according to this lady, Marie Giordano, she said, "The attached form should not be noted as a demotion. Mr. Redfield was not R.A. as a detective," — not sure what it means — it was an assignment as a detective. He is returning back to his title as a police officer. Please correct CS-6 form and return to us."

That is on number eight.

Number 9 is the corrected — same wording that she requested on a new form.

Q. Did you sign that subsequently some ten days later or more? A. Yes. That is in the 20's of October.

Q. And that then became the form that then went back on the circuit down to personnel and budget, civil service, whatever? A. Right.

Q. Director, in the 15 years that you had been with the Jersey City Police Department by 1984, I think that is approximately accurate anyway, during that entire period of time, were you aware of any understanding, any custom, any practice within the City with respect to which individuals had an expectation regarding their continuance as a detective?

[7.152] the law, and upon completion of my instructions, you will begin your deliberations, so get a good night's rest. You have an important day ahead of you tomorrow.

All rise for the jury.

See you tomorrow.

(Jury excused.)

(Recess taken.)

THE REPORTER: All rise.

THE COURT: Be seated.

First, for the purpose of the charge conference, counsel should feel comfortable and remain seated.

What I would like to do is go through it page by page. If you have any objections or proposed amendments, just yell out.

Let's start with Page 1.

MR.PACHMAN: Your Honor, sorry. I will be the first to do it.

Somewhere, and I guess this is a concern, and I state it at this point to put it out on the table. I think that somewhere in legal findings that this Court made, particularly in its opinion of January 23, 1989 regarding those issues that are not in the case, ought to be set forth to the jury.

THE COURT: Why?

MR. PACHMAN: Because I think they have had a lot [7.153] of testimony, and there has been a lot of stuff in this case about permanent and appointment and civil service, and this Court clearly stated that, and I am reading from Page 19 of the decision of the opinion of this Court dated January 23, 1989, It is clear, indeed undisputed, that plaintiff is not a permanent employee as a detective under state law. State law does not now recognize such a position, and accordingly plaintiff has not qualified for it by virtue of the existing state law.

And I think that that kind of a statement is important for the jury to understand as an underpinning to their deliberations. As we discussed —

THE COURT: If we ever said it to the jury, this case would be over. That is a finding that it is not a civil service designation, but that is why we are here —

MR. PACHMAN: No, your honor. I don't think that is why we are here.

MR. SHULMAN: I would like to put the point directly on point.

The case of parapalvis (phonetic), 117 Super, specifically says that the position of rank of detective, the statute of 40A:14-147 is to be read in paramateria with that of civil service. What they are saying, merely because it may not be a rank for civil service purposes, which would be under Title 11 of the New Jersey statutes, does not mean [7.154] that the definition and understanding and the rights arising under Title 40A will not apply,

so that is a very specific point to answer for Mr. Pachman's objection.

MR. PACHMAN: That case was before you back in January, and you dealt with that case.

THE COURT: Well, first of all, I do not agree that what we should do is tell the jury what has been decided as a matter of law.

I think what we ought to tell the jury is what the issues are, and I thought we agreed yesterday that the introductory language which I had prepared and delivered to you, you both agreed to.

MR. PACHMAN: Correct. I am not indicating specifically where the notion that we are suggesting or the language we are suggesting should go —

THE COURT: Let's go through the charge paragraph by paragraph, and if there is something that ought to be added at a specific spot, I will certainly consider it.

Page 1, any problems with that?

MR. PACHMAN: No.

THE COURT: Of course, as I say it, it means; as I amend it.

Two — by the way, I have stricken the reference to Section 1983 because I do not think that has any meaning to the jury once we explained it.

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[8.16] damages against a Defendant who willfully acting under the authority of the law deprives a person of rights guaranteed by the Constitution.

In this case, the Plaintiff claims that while he was employed by the City of Jersey City in the Police Department, he was demoted, without first having been given notice of the charges against him. The reason for the same, a hearing in which he could present his version of the facts.

To prove his claim, the Plaintiff must prove the following four elements, by a preponderance of the evidence, as I have defined that term for you.

First, he must prove that he was permanently employed by the Defendant, as a police officer, and was employed in a rank or position as a detective, and that detective was a rank or position separate and apart from a patrolman. In other words, that there was a different rank or division.

Secondly, that he was demoted from his rank or position as a detective. Third, before this decision, he was not given a hearing or told the reasons of the demotion and given an opportunity to contest that. Four, that as a result of the

[8.42] MR. PACHMAN: Yes.

MR. SHULMAN: Yes.

THE COURT: All right. would suggest you keep yourself available. If you leave the Courtroom, let Mr. Underwood know where you will be.

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(Whereupon recess takes place.)

THE COURT: Please be seated.

Ms. COX (phonetic), you have a piece of paper. Am I correct in assuming you were the floor person?

MS. COX: Yes.

THE COURT: Mr. Underwood states that the jury has reached a verdict?

MS. COX: Yes. We have.

THE COURT: What is the verdict.

MS. COX: Do you want me to read this?

THE COURT: Yes.

MS. COX: We the jury, find for the Plaintiff. We find that he has proven to have been disciplined and was thereafter denied his right to a hearing. Further, we find for the [8.43] Plaintiff in the amount of $555,000.

THE COURT: Does anyone want the jury polled?

MR. PACHMAN: No, your Honor.

MR. SHULMAN: No, your Honor.

THE COURT: In accordance with the verdict of the jury, a judgement shall be entered in favor of the Plaintiff and against the Defendant for the sum of $555,000.

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Ladies and gentlemen it's my practice to thank the jury in person and I invite you into my chambers. It is a beautiful day, if you could spare a few minutes, I would certainly like to thank you in person and have an opportunity to meet with you informally. Follow Mr. Underwood, please.

(Whereupon testimony is concluded.)

APPENDIX G — TRIAL EXHIBITS D-6, D-8, D-9; P-8

STATE OF NEW JERSEY DEPARTMENT OF CIVIL SERVICE — PERSONNEL ACTION (FORM CS-4) — LOCAL GOVERNMENT SERVICE

DOB: 5/16/39 — DATE 6/23/80

INSTRUCTIONS: Promotion to Detective

1. JURISDICTION: Jersey City	4. SOCIAL SECURITY NO.: 140-30-3127	7. NAME OF EMPLOYEE (FIRST, MIDDLE, LAST): Michael P. Redfield	CIVIL SERVICE USE ONLY
2. DEPARTMENT: Police	5. SALARY RANGE	8. TITLE DESIRED (TITLE CODE): Detective	☐ IF CHECKED HERE, TITLE DESIRED IN ITEM 8 IS INCORRECT SEE CORRECTED TITLE IN ITEM
3. DIVISION OR BUREAU: Detective	6. BASE SALARY: 17,951	9. LONGEVITY: 718	10. CRIMINAL ARREST? (IF YES ATTACH RECORD) 1. ☐ YES 2. ☐ NO
11. DUTIES: FOR NON STANDARD TITLES: SEE REVERSE SIDE: ☐	12. HIGH SCHOOL GRAD. OR EQUIV. 1. ☐ YES 2. ☐ NO	13. COLLEGE GRAD. 1. ☐ YES 2. ☐ NO	
14. UNITED STATES CITIZEN 1. ☐ YES 2. ☐ NO	15. RESIDENT 12 MONTHS IN JURISDICTION ☐ YES ☐ NO IF NO SEE REVERSE SIDE		

16. PERSONNEL ACTION DESIRED (CHECK BLOCKS AND GIVE ALL REQUESTED INFORMATION)

A. ☒ PERMANENT APPOINTMENT
B. ☐ PROVISIONAL APPOINTMENT
C. ☐ TEMPORARY APPOINTMENT
1. ☐ FULL TIME 2. ☐ PART TIME (IF PART TIME GIVE HRS. PER WK.)
3. ☐ NEW POSITION 4. ☐ SEASONAL

D. ☐ TRANSFER FROM DEPT. OF: _____ ASSENTING DEPT. HEAD _____ DATE
E. ☐ LEAVE OF ABSENCE 1. ☐ WITH PAY 2. ☐ WITHOUT PAY Length of Time _____ Return from Leave _____ REASON:

F. ☒ PROMOTION
G. ☐ TITLE CHANGE FORMER TITLE 1,4,8,24 POLICE OFFICER
H. ☒ SALARY CHANGE
I. ☐ UNCLASSIFIED (GIVE STATUTORY PROVISION):

17. EMPLOYEE'S CERTIFICATION: I certify that the above statements made by me are to the best of my knowledge true and correct.
EMPLOYEE'S SIGNATURE X _____ DATE _____

18. CERTIFICATION BY APPOINTING AUTHORITY: Certification is hereby made that this appointment has been made in accordance with all legal requirements and that the position has been properly established in accordance with ordinance or resolution.

6/18/80 — 6/18/80 — 6/16/80

(Signature of Appointee) (Date) (Signature of Appointing Off.) (Date) (Signature of Dept. Appt. Off.) (Date)

19. ☐ REPLACEMENT ☐ APPROVED ☐ FOR RECORDING ☐ DISAPPROVED SALARY
ACCOUNT NO. 650 POS. NO. ~~207.073~~ TITLE Det.
☐ RESIGNED ☐ TERMINATED ☐ RETIRED ☐ SUSPENSION ☐ DECEASED

REMARKS: ~~OLD POS. # 608.348~~ 607.072

BUDGET OFFICER

DO NOT COMPLETE BELOW • FOR CIVIL SERVICE DEPARTMENT USE ONLY

20. APPOINTING AUTHORITY SEE ACTION CHECKED BELOW

A. ☐ PERMANENT APPOINTMENT: ☐ APPROVED ☐ RECORDED PENDING REVIEW (See Box I)
B. ☐ PROVISIONAL APPOINTMENT: ☐ APPROVED PENDING ☐ RECORDED PENDING: 1. ☐ Open Competitive Examination 2. ☐ Promotional Procedures 3. ☐ Disposition of Certification 4. ☐ Review (See Box I)
C. ☐ TEMPORARY APPOINTMENT: ☐ APPROVED: ☐ RECORDED PENDING: 1. ☐ Period of 4 months only. Continuation of temporary employment beyond this period will result in permanent status for employee in NJ or NC Divisions and Provisional pending examination in the Competitive Division. 2. ☐ 90 Days During Next 12 Months 3. ☐ 6 Month Alien 4. ☐ Review (See Box I)
D. ☐ UNCLASSIFIED APPOINTMENT RECORDED IN ACCORDANCE WITH N.J.A.C. 4:1-16 AND/OR: _____
E. ☒ REQUEST: ☐ APPROVED: ☒ RECORDED: 1. ☐ Transfer 2. ☐ Leave with Pay 3. ☐ Leave without Pay 4. ☐ Promotion 5. ☐ Title Change 6. ☐ Salary Change

F. ☐ APPOINTEE INELIGIBLE
G. ☐ SALARY DISAPPR
H. ☐ DUTIES CLASSIFI
• SEE DIVISION: 1. 2.
I. ☐ OTHER ACTION:

Def Ex #6

(Authorized Agent of Civil Service Department) SEP 2 - 1980 (Date)

CIVIL SERVICE RECORD

Appointment Date	RA-TA-PA	Title	Division	Salary Range

TITLE (Certification) | LIST (Certification Check One): ☐ PRO ☐ OC ☐ INC ☐ NL ☐ SRL ☐ REL | SALARY RANGE | INITIALS | DATE

(EXPERIMENTAL CS4 • REVISED 4/71)

Appendix G

REQUEST FOR PERSONNEL ACTION (FORM CS-6) DOB 5/16/39 131.2 EFFECTIVE DATE 10-9-84

NEW JERSEY DEPARTMENT OF CIVIL SERVICE LOCAL GOVERNMENT SERVICES

INSTRUCTIONS: DEMOTED FROM DETECTIVE TO POLICE OFFICER

1. JURISDICTION: JERSEY CITY	4. SOCIAL SECURITY NO.: 140-30-3127	7. NAME OF EMPLOYEE (FIRST, MIDDLE, LAST): MICHAEL P. REDFIELD	
2. DEPARTMENT: PUBLIC SAFETY	5. SALARY RANGE	8. TITLE DESIRED: POLICE OFFICER (TITLE CODE)	CIVIL SERVICE USE ONLY: ☐ IF CHECKED HERE, TITLE DESIRED IN ITEM 8 IS INCORRECT AND CORRECTED TITLE IN ITEM
3. DIVISION OR BUREAU: POLICE	6. BASE SALARY: 25481.	9. LONGEVITY: 1,528	10. CRIMINAL ARREST? (IF YES ATTACH RECORD) 1. ☐ YES 2. ☐ NO
11. DUTIES FOR NON STANDARD TITLES: SEE REVERSE SIDE ☐	12. HIGH SCHOOL GRAD. OR EQUIV. 1. ☐ YES 2. ☐ NO	13. COLLEGE GRAD. 1. ☐ YES 2. ☐ NO	
14. UNITED STATES CITIZEN 1. ☐ YES 2. ☐ NO	15. RESIDENT 12 MONTHS IN JURISDICTION ☐ YES ☐ NO IF NO SEE REVERSE SIDE		

16. PERSONNEL ACTION DESIRED (CHECK BLOCKS AND GIVE ALL REQUESTED INFORMATION)

A. ☒ PERMANENT APPOINTMENT
B. ☐ PROVISIONAL APPOINTMENT
C. ☐ TEMPORARY APPOINTMENT
1. ☒ FULL TIME 2. ☐ PART TIME (IF PART TIME GIVE HRS. PER WK.)
3. ☐ NEW POSITION 4. ☐ SEASONAL

D. ☐ TRANSFER FROM DEPT. OF: ASSENTING DEPT. HEAD — DATE
E. ☐ LEAVE OF ABSENCE 1. ☐ WITH PAY 2. ☐ WITHOUT PAY Length of Time _____ Return from Leave _____ REASON:

F. ☐ PROMOTION
G. ☒ TITLE CHANGE FORMER TITLE DETECTIVE
H. ☒ SALARY CHANGE
J. ☐ UNCLASSIFIED (GIVE STATUTORY PROVISIONS)

17. EMPLOYEE'S CERTIFICATION: I certify that the above statements made by me are to the best of my knowledge true and correct.
EMPLOYEE'S SIGNATURE X _____ DATE _____

18. CERTIFICATION BY APPOINTING AUTHORITY: Certification is hereby made that this appointment has been made in accordance with all legal requirements and that the position has been legally established in accordance with ordinance or resolution.

(Signature Personnel Off.) (Date) (Signature Appt. Auth. Off.) 10-9-84 (Date) (Signature of Appt. Auth.) 10/10 (Date)

19. ☐ REPLACEMENT ☐ APPROVED ☐ FOR RECORDING ☐ DISAPPROVED SALARY ACCOUNT NO. 658 POS. NO. 608-[illegible] TITLE ☐ RESIGNED ☐ TERMINATED ☐ RETIRED ☐ SUSPENSION ☐ DECEASED

REMARKS: OLD POSITION NO. 607.073 [illegible]

BUDGET OFFICER

DO NOT COMPLETE BELOW • FOR CIVIL SERVICE DEPARTMENT USE ONLY

20. APPOINTING AUTHORITY SEE ACTION CHECKED BELOW

A. ☐ PERMANENT APPOINTMENT: ☐ APPROVED ☐ RECORDED PENDING REVIEW (See Box 1)
B. ☐ PROVISIONAL APPOINTMENT: ☐ APPROVED PENDING ☐ RECORDED PENDING: 1. ☐ Open Competitive Examination 2. ☐ Promotional Procedures 3. ☐ Disposition of Certification 4. ☐ Review (See Box 1)
C. ☐ TEMPORARY APPOINTMENT: ☐ APPROVED: ☐ RECORDED PENDING: 1. ☐ Period of 6 months only; C Appeal this period will result NL or NC Division and Para Competitive Division. 2. ☐ 60 Days During Term 12 Mo 4. ☐ Review (See Box 1)
D. ☐ UNCLASSIFIED APPOINTMENT N.J.A.C. 4:1-3.8 AND/OR:
E. ☐ REQUEST: ☐ APPROVED: ☐ RECORDED 1. ☐ Transfer 2. ☐ Leave with 4. ☐ Promotion 5. ☐ Title Ch

F. ☐ APPOINTEE INELIGIBLE
G. ☐ SALARY DISAPPROVED
H. ☐ DUTIES CLASSIFIED AS _____ Title Code: _____
• SEE DIVISION: 1. ☐ Competitive 2. ☐ Non-Competitive 3. ☐ Labor 4. ☐ Uncla[illegible]
J. ☐ OTHER ACTION:

Appointment Date	BA-TA-PA

TITLE (Correction)

(EXPERIMENTAL CS-6 • REVISED 4/71)

Please Note:

The attached CS-6 form should not be noted as a Demotion. Michael Redfield was not R.A. as a Detective, it was an assignment as a Detective. He is returning back to his title as Police Officer. Please correct cs-6 form and return to us.

Thank You

Marie Giordano

Def

Ex # 8

Appendix G

cc Corr. Cy.

REQUEST FOR PERSONNEL ACTION (FORM CS-4) DOB: 5-16-39 EFFECTIVE DATE 10-9-84

NEW JERSEY DEPARTMENT OF CIVIL SERVICE LOCAL GOVERNMENT SERVICE

INSTRUCTIONS: From position of Detective - Return to regular assignment status: Police Officer

1. JURISDICTION: Jersey City	4. SOCIAL SECURITY NO.: 140-30-3127	7. NAME OF EMPLOYEE (FIRST, MIDDLE, LAST): Michael P. Redfield	CIVIL SERVICE USE ONLY
2. DEPARTMENT: Public Safety	5. SALARY RANGE	8. TITLE DESIRED (TITLE CODE): Police Officer	☐ IF CHECKED HERE, TITLE DESIRED IN ITEM 8 IS INCORRECT SEE CONNECTED TITLE IN ITEM
3. DIVISION OR BUREAU: Police	6. BASE SALARY: $25,481	9. LONGEVITY: $1,528.	10. CRIMINAL ARREST? (IF YES ATTACH RECORD) 1. ☐ YES 2. ☐ NO
11. DUTIES: FOR NON STANDARD TITLES: SEE REVERSE SIDE ☐	12. HIGH SCHOOL GRAD. OR EQUIV. 1. ☐ YES 2. ☐ NO	13. COLLEGE GRAD. 1. ☐ YES 2. ☐ NO	
14. UNITED STATES CITIZEN 1. ☐ YES 2. ☐ NO	15. RESIDENT 12 MONTHS IN JURISDICTION ☐ YES ☐ NO IF NO SEE REVERSE SIDE		

16. PERSONNEL ACTION DESIRED (CHECK BLOCKS AND GIVE ALL REQUESTED INFORMATION)

A. ☒ PERMANENT APPOINTMENT
B. ☐ PROVISIONAL APPOINTMENT
C. ☐ TEMPORARY APPOINTMENT
1. ☒ FULL TIME 2. ☐ PART TIME (IF PART TIME GIVE HRS. PER WK.)
3. ☐ NEW POSITION 4. ☐ SEASONAL

D. ☐ TRANSFER FROM DEPT. OF: ASSENTING DEPT. HEAD — DATE
E. ☐ LEAVE OF ABSENCE 1. ☐ WITH PAY 2. ☐ WITHOUT PAY Length of Time ____ Return from Leave ____ REASON:

F. ☐ PROMOTION
G. ☒ TITLE CHANGE FORMER TITLE Detective
H. ☒ SALARY CHANGE
I. ☐ UNCLASSIFIED (GIVE STATUTORY PROVISION

17. EMPLOYEE'S CERTIFICATION: I certify that the above statements made by me are to the best of my knowledge true and correct. EMPLOYEE'S SIGNATURE X ____ DATE

18. CERTIFICATION BY APPOINTING AUTHORITY: Certification is hereby made that this appointment has been made in accordance with all legal requirements and that the position has been legally established in accordance with ordinance or resolution.

(Signature of Personnel Off.) 10/5/84 (Date) — (Signature of Appoint'g Off.) 10/5/84 (Date) — (Signature of Bus. Adm.) 10/5/84

19. ☐ REPLACEMENT ☐ APPROVED ☒ FOR RECORDING ☐ DISAPPROVED SALARY
ACCOUNT NO. 650 POS. NO. 608 053 TITLE Police Officer
☐ RESIGNED ☐ TERMINATED ☐ RETIRED ☐ SUSPENSION ☐ DECEASED

REMARKS: Old position # 607.073

BUDGET OFFICER

DO NOT COMPLETE BELOW - FOR CIVIL SERVICE DEPARTMENT USE ONLY

20. APPOINTING AUTHORITY SEE ACTION CHECKED BELOW

A. ☐ PERMANENT APPOINTMENT: ☐ APPROVED ☐ RECORDED PENDING REVIEW (See Box J)
B. ☐ PROVISIONAL APPOINTMENT: ☐ APPROVED PENDING ☐ RECORDED PENDING: 1. ☐ Open Competitive Examination 2. ☐ Promotional Procedures 3. ☐ Discontinuation of Consideration 4. ☐ Renewal (See Box J)
C. ☐ TEMPORARY APPOINTMENT: ☐ APPROVED: ☐ RECORDED PENDING: 1. ☐ Period of 6 months only. Continuation of temporary employment beyond this period will result in permanent status for employees in TL or NC Divisions and Provisional pending examination in the Competitive Division. 2. ☐ 30 Days During Next 12 Months 3. ☐ 6 Month Allow 4. ☐ Renewal (See Box J)
D. ☐ UNCLASSIFIED APPOINTMENT RECORDED IN ACCORDANCE WITH N.J.S.C. 4:1-38 AND/OR: .....
E. ☒ REQUEST: ☐ APPROVED: ☐ RECORDED: 1. ☐ Transfer 2. ☐ Leave with Pay 3. ☐ Leave without Pay 4. ☐ Promotion 5. ☐ Title Change 6. ☐ Salary Change

F.
G.
H. Def Ex #9
J.

☐ Title Conf. ☐ Non-Competitive (Information)

OCT 19 1984 CIVIL SERVICE DEPARTMENT

(Authorized Agent of Civil Service Department) OCT 19 1984 (Date)

CIVIL SERVICE RECORD

Appointment Date	RA-TA-PA	Title	Division	Salary Range

TITLE (Code Number) | LIST (Code Number. Check One) ☐ PSD ☐ OC ☐ INC ☐ ML ☐ SRL ☐ RRL | SALARY RANGE | INITIALS | DATE

(EXPERIMENTAL CS-4 - REVISED 4/71)

Appendix G

Rule No.

sibility of his search and custody. A desk officer may however order an additional search and guards to eliminate possibility of escape or other hazard.

714. In effecting an arrest, an officer does not have to meet on equal terms; he may resort to reasonable superior force to protect himself or in defense of others.

715. An officer shall not be justified in using his revolver to prevent escape of anyone unless he has committed a high crime. Shooting at or over moving automobiles in order to stop or apprehend the occupants involved in minor offenses or traffic violations is prohibited.

CITY PRISON

716. Food, clothing or packages brought to the City Prison for prisoners shall be carefully examined for liquor, drugs, weapons or other improper articles that may be concealed before they are delivered to the prisoners by the officer in charge. No communication shall be permitted between prisoners and visitors to the prison except by permission of the superior in charge.

717. The officer in charge of the City Prison when commencing his tour of duty shall be informed by the officer being relieved relative to the number of persons then confined. He shall visit the cells, and make a visual inspection of each prisoner. Any irregularities shall be entered in the blotter and reported in writing to the Commanding Officer.

718. Members of the Force assigned to the City Prison shall be responsible for all prisoners coming into their care.

719. They shall record the history of all persons arrested; the precinct or unit that made the arrest; when arraigned and returned from Court, and the disposition of the case.

720. They shall not permit a person in custody to be interviewed by unauthorized persons unless permission shall be first obtained from the superior officer in charge of the Detective Bureau.

DEPARTMENTAL TRIALS

721. The Director of Public Safety is empowered to hold trials for violations of Departmental Rules and Regulations.

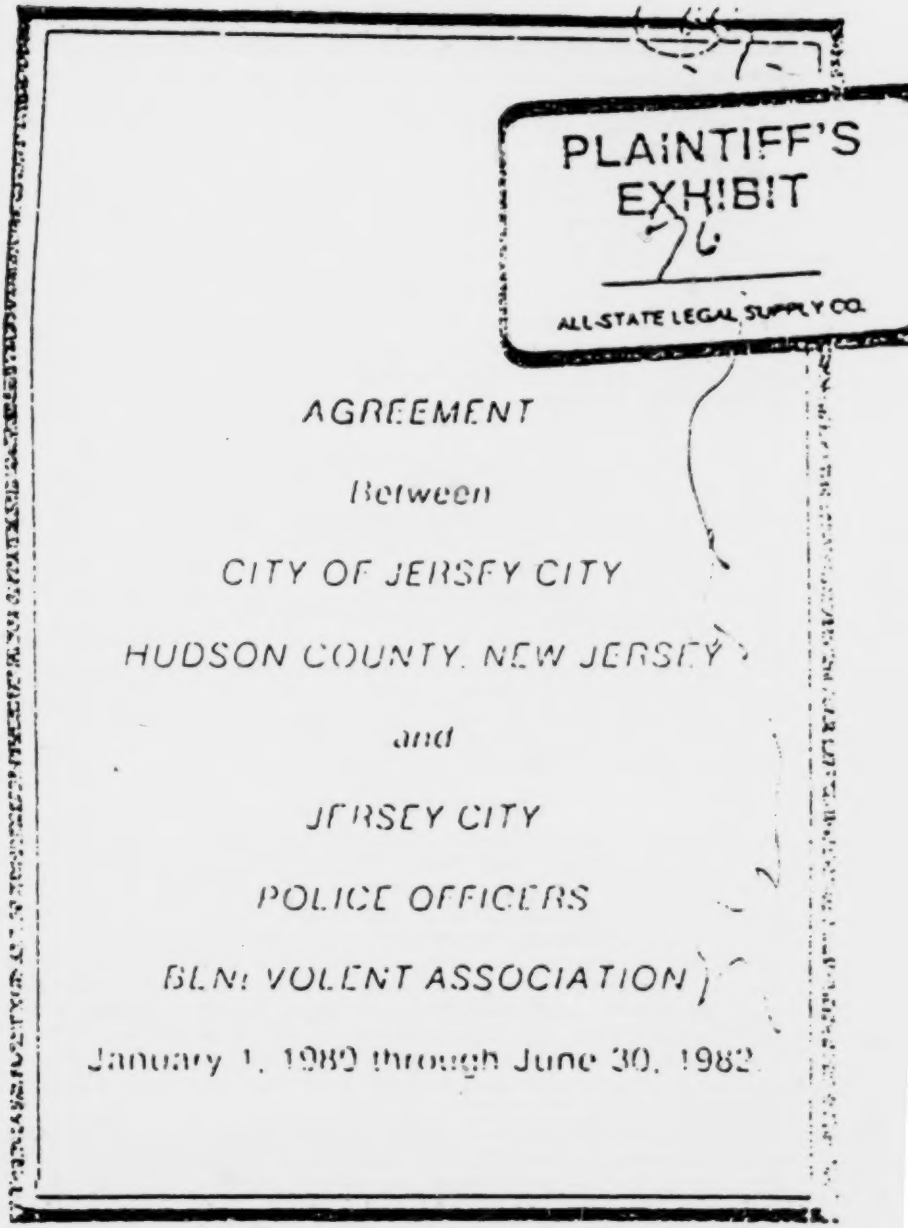
722. Any member of the Force, and employee thereof shall be subject to reprimand, loss of furlough days, suspension, deduction of pay, reduction in rank, or dismissal according to the nature and aggravation of his offense for violation of any departmental rule or regulation of for conduct of a serious nature which brings discredit upon the department.

723. Any permanently employed officer or employee who receives a fixed annual salary from the municipality shall not be suspended, removed, fined or reduced from office or employment therein except for just cause and then only after written charges and complaint shall have been preferred.

724. A written complaint shall be signed by the person or persons making such complaint and filed in the office of the Director of Public Safety, and a copy thereof served upon the accused person within fifteen (15) days after the filing thereof with the Director.

725. After the Director shall have examined the complaint and if he determines that there exists sufficient grounds for a formal hearing the accused shall be examined not less than fifteen (15) days and not more

APPENDIX H — AGREEMENT BETWEEN CITY AND JERSEY CITY POLICE OFFICERS BENEVOLENT ASSOCIATION



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Appendix H

PREAMBLE

THIS AGREEMENT entered into this First day of January, 1980 by and between the CITY OF JERSEY CITY, a Municipal Corporation of the State of New Jersey, hereinafter called the "CITY", and the JERSEY CITY POLICE OFFICERS BENEVOLENT ASSOCIATION, INC. hereinafter called the "ASSOCIATION" represents the complete and final understanding on bargainable issues between the City and the Association, and the City agrees not to enter any other Agreement or contract with those of its employees who are hereby covered, which in any way conflicts with the terms and provisions of this agreement.

ARTICLE 1
RECOGNITION

Section 1. The City hereby recognizes the Association as the exclusive collective negotiations agent for all non - supervisory Police Officers employed by the City.

Section 2. The title Police Officer shall be defined to include the plural, as well as the singular, and to include males, as well as females, and those Police Officers assigned to the Investigative Division of the Police Department.

ARTICLE II
MAINTENANCE AND MODIFICATION OF WORK RULES

Section 1. All conditions of employment relating to wages, hours of work, and general work-

ing conditions contained in the rules and regulations of the Police Department, Ordinances or Resolutions of the City pertaining to Police employees, or directives from the Office of the Police Chief, or director of Public Safety which are of universal application within the police Department, currently in effect, shall be maintained for the life of this Agreement.

Section 2. Proposed new rules or modifications of exiting rules governing working conditions, as set forth above, which are not exclusively within the discretion of management, shall be negotiated with the majority representative prior to implementation.

Section 3. The City and the Association shall appoint a committee to revise the Police Department Rules and Regulations 45 days after the execution of this agreement.

Section 4. The provisions of this Agreement will govern, where specifically applicable, any inconsistent rules, regulations or ordinances or any other provisions or manual or law notwithstanding. The City will cause to be drafted and put into effect all necessary ordinances to make existing ordinances consistent with the Agreement.

ARTICLE III
ASSOCIATION REPRESENTATIVE AND MEMBERS

Section 1. Accredited representatives of the Association, not to exceed three (3) shall be permitted to visit Police Headquarters, Sub-

stations, or Office of the Police Director for the purpose of observing working conditions or assisting in the adjustment of grievances. When the Association decides to have its representative enter the City facilities or premises as outlined above, it will request such permission from the appropriate City representatives and such permission will not be unreasonably withheld, provided further that there shall be no interference with the normal operations of the business of City Government, or the normal duties of employees. Before entering the aforesaid premises, the authorized representative shall notify the Unit Commander, or in his absence, his authorized representative.

Section 2. The president of the Association and his designee shall be assigned to special duty, day tour, and except in emergencies, shall be entitled to administer the provisions of this agreement.

Section 3. In the absence of the President, the first Vice President of the P.O.B.A. shall be assigned to special duty so that he may assume the duties of the President.

Section 4. During negotiations, authorized Association representatives not to exceed five (5) shall be excused from their normal work duties to participate in collective negotiation sessions that are mutually scheduled to take place during their scheduled work time, and shall suffer no loss of regular pay thereby.

Section 5. The City agrees to grant time off to a

maximum of thirteen (13) employees designated by the Association to attend police conventions as provided by state statute, provided seventy - two (72) hours written notice is given to the Chief of the Department by the organization. Said convention leave will include reasonable travel time.

Section 6. Two (2) members of the Association shall be granted the day off to attend State meetings and State Legislative sessions including legislative hearings.

Section 7. Elected Officers and Unit Delegates not to exceed twenty - five (25) shall be granted time off to attend local meetings and caucuses provided Divisional or Departmental operations are not impeded by the granting of such requests.

Section 8. The current practices with respect to the Operation of the P.O.B.A. office at 282 Central Avenue, Jersey City, New Jersey will be maintained for the life of this Agreement. However, if the City deems it necessary to sell or utilize said building for other purposes, P.O.B.A. shall be provided with comparable office space in another police facility.

ARTICLE IV
RETENTION OF CIVIL RIGHTS

Employees shall retain all Civil Rights under New Jersey State Law and Federal Laws, consistent with their authorities and responsibilities as Police Officers, provided, however, this provision shall not be deemed to limit or modify the Civil Rights of such employees as private citizens.

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ARTICLE V
RETIREMENT

Members who become eligible for retirement under New Jersey Law and Ordinances of the City of Jersey City shall retain all pension rights, hospitalization insurance and other benefits as currently provided.

ARTICLE VI
LEAVES OF ABSENCE

Section 1. A leave of absence without pay, for up to six (6) months will be granted for good cause to any member who has been employed for a period of one day beyond the police officer's probationary period as defined by Civil Service. The leave may be extended for up to an additional six (6) months. Such leave shall not be arbitrarily withheld.

Section 2. The Union will be notified immediately of the leave of absence of any of the police officers within the bargaining unit, also any extensions.

Section 3. Police officers on leave of absence shall not earn vacation time during such leave. Police officers annual vacation leave shall be prorated on a monthly basis.

Section 4. The annual vacation leave, in accordance with Article XI, shall be reduced by the prorated number of monthly vacation days for each month said police officer is on leave of absence.

Section 5. Police Officers on leave of absence shall not receive paid or compensatory hol-

days, during such leave. Police Officers holiday time shall be prorated on a monthly basis for the fourteen (14) holidays granted in accordance with Article XVI, the holiday time shall be reduced to the same ratio of compensatory and paid days as stated in Article XVI, by the pr[illegible] number of monthly holidays (1.2 days per month) for each month paid police officer is on leave of absence.

ARTICLE VII
DUES DEDUCTIONS

Section 1. The City agrees to deduct from the salaries of its employees subject to this Agreement, dues for the Association. Such deduction shall be made in compliance with Chapter 31[illegible]blic Laws of 1967, N.J.S.A., R.S. 52. 14 - 15.9 (e), as amended. Said monies, together with the records of any corrections, shall be transmitted to the Association office by the fifteenth (15th) of each month following the monthly pay period in which the deductions were made.

Section 2. *If, during the life of this Agreement, there shall be any change in the rate of membership dues, the Association shall furnish to the City written notice prior to the effective date of such change.*

Section 3. The Association will provide the necessary check - off authorization form and deliver the signed forms to the Police Finance Officer. The Association shall indemnify, defend, and save the City harmless against any and all claims, demands, suits or other

other forms of liability that shall arise out of or by reason of action taken by the City in accordance with the instructions of the Association pursuant to this article.

Section 4. Pursuant to Chapter 295 of the Laws of 1977, the City will not deduct dues from the salaries of any employees in the negotiating unit for an organization other than the Union. Further, the City agrees to terminate all existing dues deductions from unit members for organization other than the Union on July 1 following a request to do so by the Union.

Section 5. Representation Fee

(a) Purpose of Fee - If an employee does not become a member of the Union during any membership year (i.e., from September 1 to the following August 31) which is covered in whole or in part by this Agreement, said employee will be required to pay a represenation fee to the Union for that membership year. The purpose of this fee will be to offset the employee's per capita cost of services rendered by the Union as majority representative.

(b) Amount of Fee -

(1) Notification - Prior to the beginning of each membership year, the Union will notify the Employer in writing of the amount of the regular membership dues, initiation fees and assessments charged by the Union to its own members for that membership year. The representation fee to be paid by non-members will be equal to 85% of that amount.

Appendix H

(2) Legal Maximum - In order to adequately offset the per capita cost of services rendered by the Union as majority representative, the representation fee should be equal in amount to the regular membership dues, initiation fees and assessments charged by the Union to its own members, and the representation fee has been set at 85% of that amount solely because that is the maximum presently allowed by law. If the law is changed in this regard, the amount of the representation fee automatically will be increased to the maximum allowed, said increase to become effective as of the beginning of the Union membership year immediately following the effective date of the change.

(c) Deduction and Transmission of Fee

(1) Notification - Once during each membership year covered in whole or in part by this agreement, the Union will submit to the Employer a list of those employees who have not become members of the Union for the then current membership year. The employer will deduct from the salaries of such employees, in accordance with paragraph 2 below, the full amount of the representation fee and promptly will transmit the amount as deducted to the Union.

(2) Payroll Deduction Schedule - The employer will deduct the representation fee in equal installments, as nearly as possible, from the paychecks paid to each employee on the aforesaid list during the remainder of the

membership year in question. The deductions will begin with the first paycheck paid:

(a) 10 days after receipt of the aforesaid list by the Employer,

or

(b) 30 days after the employee begins his or her employment in a bargaining unit position, unless the employee previously served in a bargaining unit position and continued in the employ of the Employer in a non-bargaining unit position or was on layoff, in which event the deductions will begin with the first paycheck paid 10 days after the resumption of the employee's employment in a bargaining unit position, whichever is later.

(c) Termination of Employment - If an employee who is required to pay a representation fee terminates his or her employment with the Employer before the Union has received the full amount of the representation fee to which it is entitled under this Article, the employer will deduct the unpaid protion of the fee from the last paycheck paid to said employee during the membership year in question.

(3) Mechanics - Except as otherwise provided in this Article, the mechanics for the deduction of representation fees and the transmission of such fees to the Union will, as nearly as possible, be the same as those used for the deduction and transmission of regular membership dues to the Union.

(4) Changes - The Union will notify the Employer in writing of any changes in the list provided for in paragraph 1 above and/or the amount of the representation fee, and such changes will be reflected in any deductions made more than 10 days after the Board received said notice.

(5) New Employees - On or about the last day of each month, beginning with the month this agreement becomes effective, the Employer will submit to the Union, a list of all employees who began their employment in a bargaining unit position during the preceding 30 day period. The list will include names, job titles and dates of employment for all such employees.

ARTICLE VIII
MANAGEMENT RIGHTS

Section 1. The City hereby retains and reserves unto itself, without limitation, all powers, rights, authority, duties and responsibilities conferred upon the vested in it prior to the signing of this Agreement by the Laws and Constitution of the State of New Jersey and of the United States.

Section 2. The exercise of the foregoing powers, rights, authorities, duties and responsibilities of the City, the adoption of policies, rules, regulations and practices in furtherance thereof, and the use of judgment and discretion in connection therewith shall be limited only by the specific and express terms of this Agreement and then only to the extent such specific

and express terms hereof are in conformance with the Constitution and Laws of New Jersey and of the United States.

ARTICLE IX
NON - DISCRIMINATION

Neither the City nor the Union shall discriminate against any employee due to that employee's membership, non - membership participation, lack of participation, or activities on behalf of, or his refraining from activity on behalf of the Association.

ARTICLE X
WORK WEEK, OVERTIME

Section 1. The normal work day shall be eight (8) hours, in which shall be the twenty - two Section Schedule, for employees working all tours.

Section 2. If an employee is recalled to duty, he shall receive a minimum guarantee of five (5) hours pay to be computed at time and one - half rates based on the average hourly rate for a forty - hour week.

Section 3. If any employee is called to duty on his day off, he shall be paid for all hours worked and shall be guaranteed a minimum of five (5) hours at time and one half rates.

Section 4. There shall be bidding for steady shifts on a seniority basis. All bids shall be received no later than October 15th. The new shift assignments shall be implemented no

later than 45 days thereafter. This shall not include light duty assignments and those requireing special skills.

Section 5. An annual roster will be published in the month of March designating the assignment and status of each police officer.

Section 6. All Union officials on special assignments will not lose their permanent assignment, for their duration in office.

Section 7. If an employee is required to work longer than his eight (8) hour tour of duty, he shall receive overtime and time and one half rates.

Section 8. The City shall pay all employees for appearances in Municipal Court, County and Superior Court, Juvenile Court, Grand Jury and A.B.C. proceedings, on their own time, the rate of time and one - half with a four hour minimum. Employees shall submit in writing all time spent in court to unit commanders. Employees may not be retained for the purpose of attaining the minimum of four (4) hours if the appearance requires less time. This shall include motor vehicle appearances.

Section 9. In computing overtime any fraction or part of any hour shall constitute a full hour.

Section 10. Overtime will be paid in the second pay period following the pay period in which the overtime was worked.

Section 11. Employees working between 4 P.M. and 8 A.M. shall be entitled to a shift

differential. The rate shall be ten (10) cents per hour. Effective 1/1/81 the rate will be 15 cents per hour.

Section 12. All employees shall receive time and one half for the last two hours of their regularly scheduled work week, computed and paid in the same manner as overtime compensation.

Section 13. All police officers in the bargaining unit will receive their pay check by 3 P.M. every other Thursday.

Section 14. The City will endeavor to deliver special checks by 3 P.M. on the date received in police headquarters.

Section 15. The City will endeavor to provide a breakdown on all checks as to what is encluded in the pay in said check. (Overtime, night differential, etc.).

Section 16. The parties agree to meet and negotiate a new work schedule. This will commence on or about January 1, 1981. If this is not resolved within 30 days, the matter will be submitted to binding arbitration.

ARTICLE XI
VACATIONS

Section 1. Annual vacation shall be granted strictly in accordance with seniority at each location.

Section 2. the vacation period shall commence January 1st and continue until December 31st

of each year. the vacation allowances shall be as follows:

Up to the end of first calendar year	1 work day each month
One year to end of five years	25 work days
After five years	30 work days

Section 3. All employees shall receive at least 15 days of their respective vacations during the period from June 15th to September 15th each year, if requested. the employer may require the balance of the vacation to be taken before June 15th or after September 15th. Employees may take their remaining vacation days so as to have ten (10) of said days consecutively and, if entitled, the remaining five (5) days consecutively.

Section 4. Employees shall not be subject to recall on days off immediately prior, or upon return from vacation, unless all vacations are canceled because of an emergency.

Section 5. Vacation periods shall begin January 1st and shall continue through the entire year, subject to the conditions of the Article. On Januart 1 vacation time of each employee for the ensuing year becomes vested.

Section 6. An employee eligible for retirement who dies shall receive full vacation credit for the year of his death.

Section 7. An employee shall have the right to accrue unused annual vacation time with no maximum limitation to the extent permitted by law.

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ARTICLE XII
INJURY, SICK LEAVE

Section 1. If any employee is incapacitated and unable to work because of an unjury sustained in the performance of his police duties, he shall be entitled to injury leave with full pay during the period in which he is unable to perform his duties. Such leave, not to exceed one (1) year, shall be determined by the Director of the Division of Medical Services and the Director of Police. Such leave shall not be arbitrarily or unreasonably withheld.

Section 2. Employees shall be granted sick leave without loss of pay whenever they are unable to work for reasons of health, up to one (1) year for each illness, pursuant to N.J.R.S. 40: 11-9 and such leave shall be determined by the Director of the Division of Medical Services and the Director of Police. Such leave shall not be arbitrarily or unreasonably withheld.

ARTICLE XIII
INSURANCE, HEALTH AND WELFARE

Section 1. The City shall supply to employees all necessary legal advise and counsel in the defense of charges filed against them in performance of duty, or the settlement of claims for false arrest, personal injury, death or property damage arising out of or in the course of their employment, and the City shall pay and satisfy all judgments against said employees from such claims.

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Section 2. Life Insurance. The City will provide insurance in the amount of $5,000 and additional Accidental Death and Dismemberment Insurance in the amount of $5,000 for such employee, and it is the intention of the City to provide employees with $2,000 life insurance policy upon regular retirement, provided this is not in conflict with State Law.

Section 3. Whenever police officers are required to use their personal vehicles in the scope of their employment, the City will provide liability insurance coverage on said personal vehicles so that the police officer will not suffer economic damage for having to use his car in the scope of his employment.

Section 4. Hospitalization. The employee shall receive fully paid Blue Cross, Blue Shield with Rider "J" and major medical to cover themselves and their dependents.

Section 5. The City shall provide up to $240.00 per annum per employee to purchase dental insurance or service for the employee and his family. Payment shall be made to the Association and the Association shall be solely responsible for the execution of the dental insurance or service plan in accordance with the resolution.

Section 6. The City shall advance to the Union the sum of $200.00 per year per employee to purchase legal insurance or services for the employee and his family.

Section 7. The City shall advance to the Union the sum of $96.00 per individual per year to purchase an annuity program.

Section 8. Effective January 1, 1981 the City shall advance to the Union the sum of $100.00 per individual per year to provide a service called "Supplemental Benefit Fund".

Section 9. Effective January 1, 1982, the P.O.B.A. shall receive an additional $120.00 dollars, for a supplemental benefit.

Section 10. In any smoke inhalation case affecting a police officer within the unit, such police officer will be taken immediately out of service and given a complete examination. In cases where chest pains are reported by a police officer, such police officer will be immediately taken out of service and provided with complete and thorough examination at the expense of the City to assure the health and safety of such police officer.

ARTICLE XIV
TUITION REIMBURSEMENT

When funds are available the Business Administratior agrees to designate two (2) people, and the Union agrees to designate two (2) people who shall constitute a tuition reimbursement committee. This committee shall be charged with establishing equitable criteria for the administration of the program.

All courses taken must be applicable toward a degree in their profession and passing grades are required for tuition reimbursement consideration.

Appendix H

ARTICLE XV
EXCHANGE OF DAYS OFF

Section 1. the Police Department may grant a request of any member of the Department to exchange hours, duty or days off, subject to standard rules and regulations pertaining to all members who make this request. The request shall not be unreasonably or arbitrarily denied.

Section 2. The rules and regulations shall be those currently in effect in the Police Department.

ARTICLE XVI
HOLIDAYS

Section 1. All employees shall receive fourteen (14) holidays, ten (10) of which shall be given as compensatory days off and four (4) of which shall be paid in cash at straight time rates during the month of December. All compensatory days shall be credited to employees on January 1st of each year.

Section 2. Should the City declare an additional holiday for any other City employees, the members herein shall receive full amount of additional time off. For the purpose of this agreement, the word "holidays", shall be deemed to mean any day when the usual business offices of the City are closed to the general public.

Section 3. It is understood that every effort will be made in accordance with the guidelines set forth below to provide officers with the opportunity to utilize their compensatory time.

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Therefore, the following guidelines for the awarding of compensatory time are adopted by the parties:

(1) there shall be no blanket denials of compensatory time use except during holiday periods as follows:

(A) Thanksgiving Day and night
(B) Easter day and night
(C) Christmas Eve
(D) Christmas Day and night
(E) New Year's Eve
(F) New Year's Day

(2) Compensatory time shall be granted during other periods except during emergencies. An emergency shall not be declared for the sole purpose of eliminating compensatory time use but shall be based upon objective facts as determined by the Director.

(3) During non - emergency situations, use of compensatory time may not be withheld provided the member requesting compensatory time off submits his request five (5) days in advance. He is to be advised no later than forty - eight hours (48) following the submission of his request as to whether the compensatory time request is granted.

In the event a man is denied his request for the use of compensatory time because of a holiday period as set forth above or an emergency situation, he shall be given first perference on his next request for such use.

Section 4. Unused compensatory time off shall accumulate from year to year and shall be granted to the employee prior to his retirement.

Section 5. An accurate record will be maintained be each unit commander of all compensatory time due employees under his command. A book designated as The Compensatory Time Book will be kept by each unit for this purpose. It shall be the responsibility of each employee to see to it that any compensatory time due him, is properly entered into said book.

Section 6. This book shall contain all unused vacation time in addition to all unused compensatory time.

Section 7. The Director, shall, by January 30th of each year, supply each employee with a copy of an annual receipt of the record of all time owed the employee (vacation, compensatory time) which receipt shall be signed by the unit commander.

ARTICLE XVII
CLOTHING ALLOWANCE

Section 1. Police Officers will be provided with a sum of Three Hundred Ninety Dollars ($390.00) clothing allowance. The sum of One Hundred Ninety - Five Dollars ($195.00) shall be paid on the first Thursday after the Council meeting in January, and the additional One Hundred Ninety - Five Dollars ($195.00) shall be paid on the first Thursday after the Council meeting in July.

Section 2. It is understood that there is currently litigation concerning whether the members herein are entitled to an additional Fifty Dollars ($50.00). If the P.O.B.A.'s position is sustained, then this Article shall be amended to reflect the additional Fifty Dollars for clothing allowance.

ARTICLE XVIII
TERMINAL LEAVE

Section 1. All Police Officers who retire after August 1, 1980, shall receive a mandatory cash payment in lieu of time off for the number of years of service to Jersey City based upon five (5) calendar days for each year of service. All Police Officers who retire after August 1, 1980, shall also receive a mandatory cash payment in lieu of time off for any unused vacation time, to a maximum of the time to which the Police Officer is entitled. In addition to the above, all Police Officers shall receive a mandatory cash payment for all unsued compensatory time.

Section 2. For purposes of this agreement, any Police Officer who dies and prior to his death was eligible for retirement will be considered a retired Police Officer and the estate of the deceased will receive the following:

1. All accumulated compensatory time.
2. Terminal leave in accordance with this Article.
3. All accumulated vacation time, including full vacation allowance for the year of death.

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ARTICLE XIX
FUNERAL LEAVE

Section 1. In the event of a death in the employee's immediate family, he shall be granted time off from the day of death up to and including the day after the funeral, but not to exceed five (5) days.

Section 2. Immediate family, for purposes of this Section, shall be defined as follows: Parents, spouse, child, sister, brother, mother - in - law, son - in - law, daughter - in - law, father - in - law, grandparents, spouse - grandparents, grandchildren, sister - in - law, brother - in - law, or any other relative residing in the immediate household of the employee.

Section 3. An employee shall also be entitled to one day off for attendance at the funeral of the aunt, uncle, niece or nephew of himself or his spouse.

ARTICLE XX
MILITARY LEAVE

Section 1. Any employee ordered to active duty by a component of the United States Armed Forces shall be granted leave without pay for the period of such service.

Section 2. The City hereby agrees to grant military leave for ANACDUTRA to any employee in accordance with New Jersey State Statutes.

Section 3. All members of the National Guard or Reserves shall be granted time off with full

pay to attend required drills. Such time off shall be in addition to vacation, sick and administrative leave. The Director may, however, reschedule an employee's work assignment and still fulfill all employment responsibilities without the need for additional time off.

ARTICLE XXI
BULLETIN BOARDS

Section 1. The City shall permit the installation of bulletin boards at the expense of the Association, but the Police Director shall determine the exact locations and sizes of the boards to be installed.

ARTICLE XXII
GRIEVANCE PROCEDURES

Section 1. Purpose

(A) The purpose of this procedure is to secure, at the lowest possible level, an equitable solution which may arise affecting the terms and conditions of this Agreement and to resolve grievances as soon as possible so as to assure efficiency and promise employees' morale. the parties agree that this procedure will be kept as informal as may be appropriate.

(B) Nothing contained herein shall be construed as limiting the right of any employee having a grievance to discuss the matter informally with the Chief of the Department, and having the grievance adjusted without the intervention of the Association.

Section 2. Definition

The term "grievance" as used herein means

any controversy arising over the interpretation or adherence to the terms and conditions of this Agreement and may be raised by an individual, the Association, or the City.

Section 3. Steps of the Grievance Procedure

The following constitutes the sole and exclusive method for resolving grievances between the parties covered by this Agreement and shall be followed in its entirety unless any step is waived by mutual consent.

Step One:

(a) An aggrieved employee shall institute action under the provisions hereof within thirty (30) days after grievant became aware, or should have become aware through diligent inquiry, but in no event more than sixty (60) days after the occurrence of the grievance and an earnest effort shall be made to settle the difference between the aggrieved employee and his immediate Supervisor, for the purpose of resolving the matter informally. Failure to act within said periods set forth above shall be deemed to constitute an abandonment of the grievance.

(b) The immediate Supervisor shall render a decision in writing within five (5) after receipt of the grievance.

Step Two:

(a) In the event the grievance is not settled through Step One, the same shall be reduced in writing, signed by the aggrieved and filed with the Division Commander, within five (5) days following the determination by the immediate Supervisor.

(b) The Division Commander or his designee, shall render a decision in writing within five (5) days from, receipt of the grievance.

Step Three:

(a) In the event the grievance has not been resolved through Step two, then within five (5) days following the determination of the Division Commander, or his designee the matter may be submitted to the Chief of Police.

(b) The Chief, or his designee, shall submit a written answer within (10) days from receipt of the grievance.

Step Four:

(a) In the event the grievance has not been resolved through Step Three, then within five (5) days following the determination of the Chief of Police or his designee, the matter may be submitted to the Director of Police.

(b) A written answer to said grievance shall be submitted by the Director of Police, or his designee, within five (5) days.

Step Five: Arbitration

(a) If the grievance is not settled through Steps One, Two, Three, and Four, either party may refer the matter to the State Board of Mediation within ten (10) days after the determination by the Director of Police. An arbitrator shall be selected pursuant to the rules of the State Board of Mediation.

(b) However, no arbitration hearing shall be scheduled sooner than thirty (30) days after

the final decision of the Director of Police. In the event the aggrieved elects to pursue his Civil Service remedies, the arbitration hearing shall be cancelled and the matter withdrawn from arbitration. The Association shall pay whatever costs may have been incurred in the processing of the matter to arbitration.

(c) The Arbitrator shall be bound by the provisions of this Agreement and restricted to the application of the facts presented to him involved in the grievance. The Arbitrator shall not have the authority to add to, modify, detract from or alter in any way the provisions of this Agreement or any amendment or supplement thereto.

(d) The costs for the services of the Arbitrator shall be borne equally between the City and the Association. Any other expenses, including but not limited to the presentation of witnesses, shall be paid by the party incurring same.

(e) The decision shall be final and binding on both parties.

Section 4. Nothing herein shall prevent any employee from processing his own grievance, provided the Association may be present at any such hearings, and further provided, that no settlement with any such individual employee shall violate this Agreement.

Section 5. In the event an employee pleads guilty to disciplinary charges at a departmental hearing, the only arbitrable issue shall be "Was the penalty imposed reasonable

Section 6. No Police Officer shall be discharged, disciplined, reprimanded, reduced in rank, compensation, position, or deprived of any employment advantage or given an adverse evaluation of his service without just cause. Any such actions asserted by the City, or any agent or representative thereof, shall be subject to the grievance procedure herein set forth, including binding grievance arbitration. Grievants shall elect arbitration or pursuit of civil service remedies but not both.

ARTICLE XXIII
ASSIGNMENTS, REPORTING TIME

Whenever assignments and reporting time are changed, Police Officers shall be notified at least forty - eight (48) hours ahead of time, whenever it is possible to do so.

ARTICLE XXIV
POLICE EQUIPMENT

Section 1. To the extent permitted by fiscal consideration, the City agrees to provide the following equipment to its Police Officers:

Each Police Officer shall be equipped with a walkie - talkie radio when assigned or detailed to foot patrol, if sufficient radios are available.

Section 2. The City agrees to make optional, as part of Police Equipment the carrying of a nine (9) millimeter automatic hand gun, in accordance with qualifying standards within the Department.

Section 3. Future radio car purchases shall be made of patrol cars equipped with rain gutters, air conditioning and power steering, within the limits of the budgetary requirements of the Department. (These radio cars shall be assigned to the Patrol Force.)

Section 4. The City shall install a safety divider in patrol cars to protect police officers from prisoners.

ARTICLE XXV
SAFETY AND HEALTH COMMITTEE

Section 1. The Association hereby agrees to create a Safety and Health Committee of its members.

Section 2. The City hereby agrees to designate administrative personnel of the Department of Public Safety to meet periodically with the Safety and Health Committee of the Association. These meetings shall take place as jointly scheduled by the Safety and Health Committee of the Association and the designee of the City.

Section 3. The purpose of the joint committee shall be to generate proposals and suggestions for the maintenance of high safety and health standards for the operation of the Department.

ARTICLE XXVI
QUALIFICATION OF EMPLOYMENT

Section 1. All minimum standards presently in effect for appointment to the position of Police Officers shall be maintained.

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Section 2. There shall be no discrimination in the employment of Police Officers based upon race, color, sex, creed or national origin. All examinations for a position of Police Officer in the City of Jersey City shall be standard, provided, however, nothing herein contained shall be construed as a limitation upon the right of the City of Jersey City to extend preference to residents of the City in the making of appointments to the Police Department, provided such preference is in accordance with State law.

ARTICLE XXVII
COMMENDATIONS AND HONORABLE MENTIONS

Section 1. It is the desire of the City of Jersey to award in a tangible way those of its employees who perform their duties in an exemplary fashion.

Section 2. Any Police Officer earning the award of Medal of Honor, or Honorable Mention Valor Award shall receive two (2) of compensatory time off.

Section 3. Any employee receiving a Commendational cross shall receive one (1) compensatory day off.

Section 4. The President of the P.O.B.A. shall designate one member of the Departmental Awards Committee.

Section 5. Awards, the Director, or his designee and the President of the P.O.B.A. or his designee, shall in each January choose a

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Police Officer of the preceding year for an award based upon outstanding service to the community and/or Dept., the recipient shall be awarded two compensatory days off.

ARTICLE XXVIII
DEFECTIVE VEHICLES

Section 1. It shall be the responsibility of each Police Officer to immediately report any defective vehicles to his immediate Superior.

Section 2. In the event appropriate city authorities determine that a vehicle is in an unsafe condition, said vehicle shall be removed from service and repaired.

ARTICLE XXIX
SPECIAL TRAINING

Special Training shall be scheduled during working hours whenever practical.

ARTICLE XXX
SALARIES AND LONGEVITY

Section 1. Police Officers will receive compensation in accordance with the following schedule:

		Jan. 1, 1980	May 5, 1980
Police Officer	First Year	$14,000.00	$14,000.00
Police Officer	Second Year	15,400.00	15,821.00
Police Officer	Third Year	17,000.00	17,421.00
Police Officer	Fourth Year	18,000.00	18,421.00
Detective		19,151.00	19,566.00
		Jan. 1, 1981	**May 4, 1981**
Police Officer	First Year	$15,000.00	$15,000.00
Police Officer	Second Year	17,021.00	17,479.00

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Police Officer	Third Year	18,621.00	19,078.00
Police Officer	Fourth Year	19,621.00	20,078.00
Detective		20,866.00	21,326.00
		Jan. 1, 1982	
Police Officer	First Year	$15,800.00	
Police Officer	Second Year	18,578.00	
Police Officer	Third Year	20,178.00	
Police Officer	Fourth Year	21,178.00	
Detective		22,498.00	

The City reserves the right to raise entry level salaries.

Section 2. Employees will receive an annual longevity payment in accordance with the following schedule:

YEARS OF SERVICE	PAYMENTS
From five years to ten years	Two percent of salary
From ten years to fifteen years	Four percent of salary
From fifteen years to twenty years	Six percent of salary
From twenty years to twenty - two years	Eight percent of salary
Over twenty - two years	Ten percent of salary

A Police Officer hired up to October 31st of each year will receive full credit for these purposes for the full year of service. Anyone hired thereafter will receive no credit until the succeeding January 1st.

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ARTICLE XXXI
TABLE OF
ORGANIZATION COMMITTEE

Section 1. Immediately upon implementation of this Agreement, A Committee is to be formed to be known as the Table of Organization Committee and shall be composed of four members: two (2) from the City and two (2) from the Association.

Section 2. Such Committee shall choose its own chairman and formulate its own rules.

Section 3. The purpose of the Committee shall be to provide input into any development of a table of organization for patrolmen within the Department.

ARTICLE XXXII
MISCELLANEOUS

Section 1. The City agrees to assign two (2) employees to Radio Cars between the hours of 4:00 P.M. and 8:00 A.M. except in an emergency.

Section 2. Mental Patients shall be transported in an ambulance.

Section 3. This Agreement represents and incorporates the complete and final understanding and settlement by the parties on all bargainable issues which were or could have been the subject of negotiations. During the term of this Agreement, neither party will be required to negotiate with respect to any such

matter, whether or not within the knowledge or contemplation of either or both of the parties at the time they negotiated or signed this Agreement.

Section 4. Annual uniform inspections shall be carried out at roll call.

Section 5. A police officer will be granted forty eight (48) hours off with pay after donating blood. This will not apply to apply to police officers donating blood to the Police Department Blood Bank.

Section 6. The City and the Union will equally share the expense for printing 1,000 copies of this agreement for distribution to all members of the Union and City administration. The City will receive 100 copies upon payment of bill.

Section 7. The City will endeavor to provide at its expense parking facilities for police personnel while on duty, wherever possible.

Section 8. The City will permit pay phones to be installed in the police locker rooms in all building where Police Officers are employed, for the exlusive use of the Police Officers at no expense to the City.

Section 9. The Union and the City agree to cooperate in the pursuit of Federal and State Fund for the betterment of the Department. All State and Federal monies received by the City for use in the Police Service shall be reported to the Union

Section 10. Retired I D Card — A retired

Police Officer shall receive his laminated Police Department I.D. Card with the word "Retired" entered on same.

ARTICLE XXXIII
CIVIL SERVICE CLASSIFICATION AND PROMOTION

Section 1. Promotional examinations for the next highest rank above police officer will be requested to Civil Service Department every two (2) years.

Section 2. A promotional list to the next highest rank will be maintained at all times.

Section 3. The City agrees that in the event of a recommended change in the classification of a position in the Jersey City Police Department, it will notify the Union fifteen (15) days prior to its submission of the recommended change to the Civil Service Commission.

ARTICLE XXXIV
TIME OFF FOR BROTHER OFFICERS KILLED IN THE LINE OF DUTY

Section 1. Time off will be granted six (6) members of the Police Department to attend the funeral service for a Police Officer, or Fire Fighter killed in the line of duty within the State of New Jersey.

Section 2. A marked car will be granted to the Union to be used for said services, at the discretion of the Director of Police.

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Section 3. Time off will be granted to two (2) Police Officers of the Police Department to attend the funeral services for a Police Officer or Firefighter killed in the line of duty outside the State of New Jersey.

ARTICLE XXXV
POLICE OFFICER'S
BILL OF RIGHTS

Section 1. Members of the Force hold a unique status as Police Officers in that the nature of their office and employment involves the exercise of a portion of the police powers of the Municipality.

Section 2. The wide ranging powers and duties given to the Department and its members involve them in all manners of contacts and relationships with the public. Out of these contacts may come questions concerning the actions of the members of the Force. These questions may require investigations by Superior Officers. In an effort to insure that these investigations are conducted in a manner which is conducive to good order and discipline, the following rules are hereby adopted:

(a) The interrogation of a member of the Force shall be at a reasonable hour, with the light of all circumstances involved, preferably when the member of the Force in on duty;

(b) The member shall be informed of the nature of the investigation before any interrogation commences. If the informant or com-

plainant is anonymous, then the officer shall be so advised. Sufficient information to reasonably apprise the member of the allegations will be provided. If it is known that the member of the force is being interrogated as a witness only, he will be so informed at the initial contact.

(c) The questioning shall be reasonable in length. Reasonable respites shall be allowed. Time shall also be provided for personal necessities, means, telephone calls, and rest periods as are reasonably necessary;

(d) The interrogation of the member shall not be recorded;

(e) The member of the Force shall not be subject to any offensive language, nor shall he be threatened with transfer, dismissal or other disciplinary punishment. No promise of reward shall be made as an inducement to answering questions. Nothing herein shall be contrued to prevent the investigating officer from informing the member of the possible consequences of his acts.

(f) If a member of the Force is under arrest or likely to be, that is, if he is a suspect or the target of a criminal investigation, he shall be given his rights pursuant to the current decisions of the United State Supreme Court.

(g) If a member, as a result of an investigation is being charged with a violation of the rules and regulations or is about to be so charge, he shall be afforded an opportunity to

consult with counsel or P.O.B.A. representatives before any further interrogation.

Section 3. An employee may see his personnel file upon request. If an employee wishes to answer or supplement any material found in his personnel file, he may do so and his written statement shall become part of the personnel file. An employee or his representative shall have the right to inspect any of the employees files maintained by the City.

Section 4. An employee's home telephone number and address shall not be disclosed to any person who is not a member of the Jersey City Police Department.

Disciplinary charges must be brought within thirty (30) days from the date of the alleged infraction or the discovery of such infraction. Failure to charge within thirty (30) days shall act as a bar to the bringing of charges.

No Police Officer will be subjected to questioning with the use of any polygraph machines, psychological stress evaluators or similar lie - detector devised in internal investigations. Upon request, a Police Officer will have the right to be accompanied by counsel or any other person of the Police Officer's choosing during the entire interrogation of the member by the City. Any Police Officer who has been found to have violated the rules of the Department, will have such record of disciplinary action expunged from his or her Police Department personnel records if there has not

been any further determination against him or her by the Department for having violated its rules, within the next two (2) succeeding years. This will apply to Police Department records only

ARTICLE XXXVI
SEPARABILITY AND SAVINGS

If any provision of this agreement or any application of this agreement to any Police Officer or group of Police Officers is held to be invalid by operation of law or by court order or other tribunal of competent jurisdiction, such provision will be inoperative but all other provisions will not be affected thereby and will continue in full force and effect. In the event a provision of this contract is deemed to be "invalid" then and in that event, the parties agree to meet within fifteen (15) working days to negotiate a provision to replace the one declared invalid.

ARTICLE XXXVII
EXTENSION OF CONTRACT AGREEMENT

In the event that the City and the Union have not by June 30, 1982 agreed upon the terms and conditions of employment of the police officers for the contract period commencing June 30, 1982, then the terms and conditions of this contract of employment will remain in full force and effect, without prejudice, until the

negotiation, consummation and execution of said later contract.

ARTICLE XXXVIII
DISCHARGE AND DISCIPLINE

Section 1. No Police Officer will be disciplined or discharged except for just cause. The question of just cause will specifically be subject to the Greivance Procedure of this agreement.

Section 2. No Police Officer will be disciplined or called to a meeting that would result in discipline without a Union representative present.

Section 3. Disciplinary action with the exception of verbal warnings are to be presented on a "Disciplinary Action Form" with a copy made available to the Police Officer.

Section 4. The City will notify the Union in writing of any discharge or suspension within three (3) days (excluding weekends and holidays) after the Police Officer is discharged or suspended.

Section 5. If a Police Officer is discharged or suspended, he or she may elect to proceed to arbitration or Civil Service proceedings but not both.

Section 6. No hearing will take place without the Union being first notified and the Police Officer must be given sufficent time to receive counsel, no less than give (5) days excluding weekends & holidays.

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Section 7. There will be two (2) types of hearings:

A. Formal
B. Informal

Section 8. Formal Hearings

Formal hearings will be held before a tribunal of one (1) Police Officer and two (2) Police Superiors and Union Representatives. There will be a transcript, taped or written, of all proceedings. A decision as to guilt will be rendered within one (1) hour of the close of formal presentations

The panel will recommend to the Director of Police a suitable punishment if found guilty.

The Director of Police will have the final discretion as to the penalty, which must be rendered within thirty (30) days of the close of trial.

Section 9. Informal Hearings

Informal hearings will be conducted by the Director of Police or his designee with the Police Officer, and a Union representative present. Their will be no written or taped record of the proceedings. The Police Officer retains the right to appeal as to the extent of the sentence of Civil Service, if applicable, or an arbitrator, but not both.

Section 10. Written Reprimands

A written reprimand must be served upon the Police Officer within five (5) days of the occurance for which the reprimand is being given

The Police Officer will retain the right to appeal a written reprimand to the Director of Police.

In all cases a Police Officer will be allowed to respond in writing for the record.

Section 11. Oral Reprimand

An oral reprimand will be just what it implies. There will be no written record.

ARTICLE XXXIX
DURATION OF AGREEMENT

This agreement will be effective as of January 1, 1980 and will terminate on midnight June 30, 1982. Bargaining for the next succeeding contract will commence no later than January 15, 1982 in accordance with applicable State Statutes and Rules of the Public Employment Relations Commission.

Any provision of this agreement may be changed, supplemented or altered provided both parties mutually agree in writing.

The memorandum of agreement and supplemental agreement entered into by the parties on July 14, 1980 is incorporated herein by reference.

Appendix H

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals at Jersey City, New Jersey, on this _____ day of _____, 1980.

JERSEY CITY POLICE OFFICERS BENEVOLENT ASSOCIATION

BY: _____
RONALD BUONOCORE

CITY OF JERSEY CITY, HUDSON COUNTY, NEW JERSEY

By: _____

WITNESS:

By: _____

WITNESS:

By: _____

Supreme Court, U.S.
FILED
OCT 1 1991
OFFICE OF THE CLERK

(2)

No. 91-405

In The

Supreme Court of the United States

CITY OF JERSEY CITY, a political subdivision, JERSEY CITY POLICE DEPARTMENT, and RICHARD HARRISON and WALTER ADAMS, Directors of the Jersey City Police Dept.,

Petitioners,

vs.

MICHAEL J. REDFIELD,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the United States Court of Appeals properly affirmed the district court judgment in favor of respondent.

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No. 91-405

In The

Supreme Court of the United States

October Term, 1991

CITY OF JERSEY CITY, a political subdivision, JERSEY CITY POLICE DEPARTMENT, and RICHARD HARRISON and WALTER ADAMS, Directors of the Jersey City Police Departments,

Petitioners,

vs.

MICHAEL J. REDFIELD,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

RESPONDENT'S BRIEF IN OPPOSITION

The respondent Michael Redfield respectfully requests that this Court deny the petition for a writ of certiorari, seeking review of the Court of Appeals judgment order (Pet. App. 1a-2a).

OPINIONS BELOW

The unreported opinions and orders below are reproduced at petitioners' appendices A, B, C, D, and E.[1]

STATEMENT OF JURISDICTION

The judgment order of the Court of Appeals for the Third Circuit was entered on June 4, 1991 (Pet. App. 1a-2a). This Court's jurisdiction is invoked under 28 U.S.C. § 1254 (1). The judgment of the district court was entered only against the City of Jersey City and accordingly the City of Jersey City is the only proper petitioner (Pet. App. 43a-44a).

STATUTES INVOLVED

The statutes involved are 42 U.S.C. § 1983 (Pet. 2) and N.J.S.A. 40A:14-147 (Pet. 3-4), which are reproduced in the petition for a writ of certiorari.

STATEMENT OF THE CASE

On October 7, 1984, respondent Michael Redfield, a Jersey City Police Detective, while in uniform, on off-duty detail, provided security for Foxes, a night club in Jersey City, New Jersey. That night, a fellow Jersey City Police Officer, Kenneth Bolhardt, while off-duty and a patron at Foxes, was involved in a fight at the club. Bolhardt accused Redfield of failing to come to his aid and of being derelict in his duties for refusing to arrest the other combatants. On October 9, 1984, while Redfield was on vacation, Jersey City Police Director Richard Harrison

---

1. This January 23, 1989 opinion as reproduced by petitioners in Appendix C, at page 21a, second paragraph, contains a typographical error. Respondent joined the Jersey City Police Department in April 1970, not April 1979.

determined Redfield was neglectful in his duties as a result of this accusation and summarily demoted and reassigned respondent from detective to patrolman, reduced his salary, and transferred him to a new precinct which prevented any off-duty work at the night club. Redfield was stripped of his gold shield and reissued a silver one. No charges were filed (Pet. App. 46a).

Respondent was not afforded a hearing to explain the events of October 7, 1984, and he was denied any explanation for the job change. Respondent was ostracized and branded a coward by fellow officers (Pet. App. 46a).

Respondent filed a complaint in the United States District Court for the District of New Jersey, Civ. No. 86-3869, which was allocated to Honorable H. Lee Sarokin, U.S.D.J., against the City of Jersey City, the Jersey City Police Department, Police Director Harrison and his successor, Walter Adams, claiming, *inter alia*, that the demotion deprived respondent of property rights without due process contrary to 42 U.S.C. § 1983 ("Section 1983"), and state law, custom and practice, and local rules and regulations (Pet. App. 46a-47a). Respondent claimed that, having been promoted to detective in 1980 with an increase in salary and issuance of a gold detective badge, his was a different rank or position than patrolman (Pet. App. 70a). As a permanent member of the Jersey City police force, he could not and should not have been demoted to patrolman for disciplinary reasons until he was afforded due process in the form of written charges and a hearing (Pet. App. 47a-48a). Petitioners denied that respondent was disciplined and demoted and contended he was merely reassigned. At trial, petitioners contended that this was a reassignment in lieu of discipline.

By opinion and order filed July 29, 1988, the district court granted summary judgment in favor of respondent on his due process claim (Pet. App. 3a-19a).

By opinion and order filed January 23, 1989 (Pet. App. 20a-42a), the district court reconsidered and vacated the prior order and opinion of July 29, 1988. The claims against Harrison and Adams were dismissed on the basis of qualified immunity. The district judge determined that the issue of mutual understanding as to respondent's permanent appointment to detective presented a genuine factual issue (Pet. App. 31a).

The Court stated:

> The court concludes that plaintiff should be allowed to establish at trial that, based upon custom and practice, as well as existing regulations and agreements, those appointed as detectives in the Jersey City Police Department considered the designation to be a promotion carrying with it certain benefits, prestige and expectations. Among those expectations may have been the understanding that loss of the designation of detective for purported disciplinary purposes would entitle the individual involved to a hearing. It does not necessarily follow that all rights and benefits to which the plaintiff would be entitled under a recognized civil service classification necessarily must be accorded to plaintiff. His property right may be sufficient, however, to require a hearing before he can be deprived of it.
>
> The characterization of the personnel action as a "promotion" or "reassignment" is not dispositive. The designation may have conferred a property right, by reason of the conduct of the employer. Withdrawal or reduction of that right may entitle the respondent to a hearing where the alleged basis is some misconduct on the part of the employee.

(Pet. App. 37a-38a).

The matter was tried in July 1990 before a jury for eight days.

At the conclusion of the testimony, the court, with input and approval of both counsel, prepared an overview of the case and outline of the issues which supplemented the jury charge.

> In essence, the plaintiff claims that he was promoted to detective from patrolman. That the detective department is a separate rank or position, requiring a hearing before he could be demoted or disciplined.
>
> The Defendant, on the other hand, contends that the detective department is not a separate rank or position. That the plaintiff was subject to reassignment as a patrolman at any time, without the necessity of giving him a hearing. That is basically the issue in this case. So you will have to decide first, that issue.
>
> Then you will have to decide whether or not the action taken by the city, against the plaintiff, constituted discipline of him and whether under all of the circumstances, he was or was not even entitled to a hearing.
>
> Finally, if you decide he was entitled to a hearing and there is no suggestion that he received one, whether denial caused him damage and if so what those damages are. So, basically, these are the issues that you will have to decide. . . .

(Resp. App. 1a-2a).

Petitioners failed to make a motion for directed verdict at the end of the case. The district court fully charged all elements of a Section 1983 claim. Petitioners refused to consent to interrogatories to be submitted to the jury. The jury returned a general verdict in favor of respondent (Pet. App. 68a). Petitioners' motion for judgment notwithstanding the verdict (n.o.v.) was denied (Pet. App. 45a-54a). The district court entered judgment in favor of respondent on October 24, 1990 (Pet. App. 43a-44a).

The petitioners appealed pursuant to 28 U.S.C. § 1291. Oral argument was held on May 15, 1991, before Hons. William D. Hutchinson, Leonard Garth, and Robert Cowen, Circuit Judges, and the Court of Appeals, by judgment order filed June 4, 1991, affirmed (Pet. App. 1a-2a). Pursuant to the Internal Operating Procedures for the Third Circuit, 6.1, 6.2 (July 1990), a judgment order is appropriate where the panel unanimously determines that there was no error below (Resp. App. 2a-3a).

Respondent respectfully submits that petitioners have not shown any conflicts below or any other special and important reasons to grant the writ.

REASONS FOR DENYING THE WRIT

Respondent submits that the writ should be denied for the following reasons:

1. *The district court properly instructed the jury regarding the elements of a Section 1983 cause of action.* Petitioners distort the trial judge's decision not to tell the jury regarding the January 23, 1989 opinion (Pet. 8; Pet. App. 65a-66a).

The trial judge declined to charge that respondent could not rely upon civil service law to establish a property right and decided instead to tell the jury the elements of the Section 1983 claim which respondent must establish (Pet. App. 66a). There is no requirement that a Section 1983 property right be based on state civil service classifications (Pet. App. 37a-38a). This is consistent with the trial judge's opinion and order of January 23, 1989 (Pet. App. 20a-42a). Petitioners did not appeal this order (Resp. App. 11a-12a).

The court accepted petitioners' requests to charge on the issues of custom and practice of the Jersey City Police Department; and whether a "detective" was a separate rank from "patrolman" (Resp. App. 4a). The court also accepted petitioners' request to charge, pursuant to *Mt. Healthy City School Dist. Bd. of Ed. v. Doyle,* 429 U.S. 274 (1977), the "but for" test, that if the results would have been the same even if respondent had been given a hearing, then the jury could award only nominal damages (Resp. App. 5a). These issues raise factual questions for a jury to resolve.

Petitioners objected to that portion of the instruction dealing with N.J.S.A. 40A:14-147 contending that the court's January 23, 1989 ruling declared respondent had no permanent position as a detective (Resp. App. 6a-9a). The court rejected petitioners' contention, and stated as follows:

> Just so there is no question about what the Court's view was, the Court found that under civil service there was no position as detective. We have a fact issue now as to whether under the actions taken by Jersey City, they recognized that detective was a separate rank or position and if they do, then they have a right to consider the state law as to what procedures had to be followed in order to remove him from that position, and this statute is some evidence of that, and so I am going to charge that over the [petitioner's] objection.

(Resp. App. 9a).

Petitioners have shown merely dissatisfaction with the jury verdict and opinions below without establishing a basis for granting the writ of certiorari.

2. *The district court judgment is sufficiently supported by the evidence.* This Court's prior decisions and the Third Circuit cases are controlling as a matter of law and there are no conflicts between the circuit court decisions and this Court's decisions. *See Board of Regents of State Colleges v. Roth,* 408 U.S. 564, 577 (1972); *Perry v. Sinderman,* 408 U.S. 593 (1972); *Logan v. Zimmermann Brush Co.,* 455 U.S. 422, 430 (1982); *Memphis Light Gas and Water Division v. Craft,* 436 U.S. 1, 9 (1978); *see also, Clark v. Township of Falls,* 890 F.2d 611, 617 (3rd Cir. 1989); and *Stanna v. School District of Pittsburgh,* 775 F.2d 122 (3rd Cir. 1985). These cases set forth that state common and statutory law govern whether a property right exists and that the sources of the right include course of dealings, mutual understandings, collective bargaining agreements, and local rules and regulations. Respondent proved the existence of his property right and the deprivation thereof under each category. This was specifically found by the trial judge in his denial of the motion n.o.v. (Pet.

App. 50a). There are no decisions cited by petitioners on questions of federal law in conflict with the district court opinion denying the motion n.o.v. and the Third Circuit affirmance. Petitioners seek to use the petition for a writ of certiorari to alter the findings of the jury and the district court on factual matters and, accordingly, the writ should be denied.

3. *Petitioners' argument that New Jersey state law does not support respondent's claims misstates the relevant law.* Petitioners purport to show a conflict between the district court opinion denying the motion n.o.v. and *Woolley v. Hoffmann-LaRoche, Inc.*, 99 N.J. 284, 491 A.2d 1257, *mod.*, 101 N.J. 10, 499 A.2d 515 (1985) and *Ware v. Prudential Ins Co.*, 220 N.J. Super. 135, 531 A.2d 757 (App. Div. 1987), *certif. denied*, 113 N.J. 335, 550 A.2d 450 (1988) and to argue a distinction between private, non-collective, and public, collective bargaining employment. By the very nature of the "color of law" requirement, Section 1983 employment cases involve public employment.

Petitioners, however, did not cite these two cases to either the district court, pre-trial, or on the motion n.o.v. or to the Third Circuit or argue this point to either court. In any event, these two cases do not conflict with the trial court's decision. In the case at bar, both the collective bargaining agreement and the Jersey City Police Department rules and regulations substantiate respondent's claim that he was entitled to written charges and a hearing before being disciplined and demoted. *See* Rule 723, (Pet. 5) and Agreement between City of Jersey City and Jersey City police officers Benevolent Association, Article IV, "Retention of Civil Rights" (Pet. App. 80a), and Article XXXVIII, "Discharge and Discipline", Sections 3 and 8 (Pet. App. 115a-116a).

The trial court relied upon *Woolley, supra,* not to establish the contours of the federal law on Section 1983 claims, but to

cite the state common law principle that an implied contract ma be binding (Pet. App. 50a).

Further, petitioners' counsel agreed to the specific jury charg that "It is clear that under the law, a course of dealing may resu in an implied contract. The course of dealing would include th length of service, whether there was an increase in salary, an whether there were other indicia of the rank and position whic give rise to the expectation that said rank or position woul continue" (Resp. App. 10a). *See Bishop v. Wood,* 426 U.S. 341 344 (1976). This is consistent with prior decisions of this Court *See Board of Regents of State Colleges v. Roth, supra;* and *Perr v. Sinderman, supra.*

4. *The district court correctly instructed the jury on stat law.* Petitioners' argument that the Third Circuit erred is flawed Petitioners take the trial judge's statements out of context an petitioners fail to cite any authority that state civil service la is the exclusive basis to establish property rights in a Section 198 context.

Petitioners rely upon the trial judge's statement in the charg conference that "If we ever said it to the jury, the case woul be over" (Pet. 12) to support the exclusivity argument. Tha reliance is misplaced. The trial judge continued to state "tha is the finding that it [detective] is not a civil service designatio but that is why we are here" (Pet. App. 65a). Petitioners' argumen would preclude any detective from establishing a Section 198 claim, notwithstanding custom and practices and mutua understandings, simply because there is no civil service categor of "detective". Petitioners offer no authority for so limitin Section 1983 claims. This position is contrary to this Court' decisions.

The district judge earlier ruled (Pet. App. 49a) that responden

was entitled to show a property interest under the Supreme Court and Third Circuit case law because state civil service law does not claim exclusivity or otherwise prohibit granting a hearing:

> However, state law does not prohibit granting a hearing to such persons if local practice has created such an entitlement based on the benefits entitled by such designation.

(Pet. App. 38a).

New Jersey law recognizes that the civil service statutory scheme must be read *in pari materia* with the statutes providing for hearings for police officers (N.J.S.A. 40:47-6, which is the source statute for N.J.S.A. 40A:14-147) because the civil service act "does not purport to deprive aggrieved employees of judicial relief". *Perrapato v. Rose,* 83 N.J. Super. 245, 249, 199 A.2d 385 (App. Div. 1964).

The trial judge ruled that custom and practice and mutual understandings may create a property interest pursuant to *Perry v. Sinderman, supra* (Pet. App. 49a). The Collective Bargaining Agreement, which was submitted to the jury, provides that police officers retain all civil rights (Article IV); affords officers a "Bill of Rights" (Article XXXV); and establishes procedures for Discharge and Discipline (Article XXXVIII) which require at a minimum written notice of the charges and an opportunity to respond, and a meaningful hearing (Sections 3 and 8) (Pet. App. 80a, 111a-114a, 115a-116a; Pet. 5).

The jury heard testimony from which it concluded that Redfield was disciplined. Police Director Harrison conceded that Redfield was disciplined by the demotion, and Jersey City Police Chief John Fritz, whose deposition was read to the jury, said that whenever discharge or discipline is meted out, the department

must implement the terms of the Collective Bargaining Agreeme and the Jersey City Police Department rules and regulations (Pe App. 48a-53a).

Decisions of the federal courts regarding state law a generally accepted by this Court "unless their conclusions a shown to be unreasonable", *Poppe v. Clark*, 337 U.S. 472 486-87 (1948) (since determination of state law by court belc not unreasonable, it is accepted as correct for purposes of t case). *See MacGregor v. State Mut. Life Assur. Co.*, 315 U. 280, 281 (1942) (applicability of Michigan legislation regardi conduct of insurance business in Michigan):

> No decision of the Supreme Court of Michigan, or of any other Court of that state, construing the relevant Michigan law has been brought to our attention. In the absence of such guidance, we shall leave undisturbed the interpretation upon purely local law by a Michigan federal judge of long experience and by three circuit judges whose circuit includes Michigan.

The trial judge correctly applied state law to the case at b and no error has been shown.

5. *The Jersey City Police Department Collective Bargaini Agreement does not bar Section 1983 claims.* Petitioners arg that the Collective Bargaining Agreement excludes respondent right to bring a Section 1983 claim. This argument is flaw because it ignores N.J.S.A. 40A:14-147 and runs contrary to t decisions of this Court, *McDonald v. City of West Branch*, 4 U.S. 284, 289 (1984); *Patsy v. Bd. of Regents of the State Florida*, 457 U.S. 496 (1982) and of the Third Circuit, *Cheyn State College Faculty v. Hoffstedler*, 703 F.2d 732, 737 (3rd C

1985). *See also, Capua v. City of Plainfield,* 643 F. Supp. 1507 (D.N.J. 1986).

Mathews v. Eldridge, 424 U.S. 319 (1976) and *Cleveland Bd. of Educ. v. Loudermill,* 470 U.S. 532, 545 (1985) hold that before termination or disciplinary action, the aggrieved party must be given notice of charges, and explanation of the evidence and an opportunity to present his version.

The rules and regulations of the Jersey City Police Department and Collective Bargaining Agreement also require due process (Pet. 5; *see* Pet. App. 80a, 111a-116a).

Rule 723, Rules and Procedures, Jersey City Police Department, states:

> Any permanently employed officer or employee who receives a fixed annual salary from the municipality shall not, be suspended, removed, fined or reduced from office or employment therein except for just cause and then only after written charges and complaint shall have been preferred.

(Pet. 5).

The Collective Bargaining Agreement recognizes that police officers retain "all civil rights under New Jersey State Law and Federal Laws" (Article IV) (Pet. App. 80a).

The Collective Bargaining Agreement also states that "No Police Officer will be disciplined or discharged except for just cause" (Pet. App. 115a). Except for verbal (oral) warnings, all disciplinary actions are to be made in writing (Article XXXVIII,

Section 3) and there must be a formal hearing (Section 8) (Pet. App. 115a-116a).

Pre-deprivation hearings are the norm and only in extremely narrow situations can a hearing be postponed — and even then not eliminated — until after the deprivation has been effected. *Berlanti v. Bodman,* 780 F.2d 296, 301 (3rd Cir. 1985); *Stanna v. School District of Pittsburgh,* 775 F.2d 122 (3rd Cir. 1985); *Aiello v. City of Wilmington, Delaware,* 426 F. Supp. 1272, 1286 (D. Del. 1976); *see also, Perrapato v. Rose,* 83 N.J. Super. 245, 199 A.2d 385 (App. Div. 1964); *D'Ippolito v. McGuire,* 33 N.J. Super. 477, 483-85, 111 A.2d 568 (App. Div. 1955).

There was no obligation under the law for respondent to have exhausted administrative remedies. *See McDonald v. City of West Branch,* 466 U.S. 284 (1984). Writing for the Court, Justice Brennan reasoned as follows:

> The union's interests and those of the individual employee are not always identical or even compatible. As a result the union may present the employee's grievance less vigorously, or make different strategic choices, than would the employee."

Id. 466 U.S. at 291.

It was never the intention of Congress that arbitrations or administrative process would provide an adequate substitute for judicial proceedings in adjudicating claims under Section 1983. *McDonald v. City of West Branch, supra,* 466 U.S. at 289.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

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THOMAS J. WALL
On the Brief

APPENDIX A — EXCERPTS OF JURY INSTRUCTION TRANSCRIPT (8T14-7 to 8T15-14)

[14] Now, what I would like to take up with you, are the specific claims in this case. But first, I am going to give you an overview of the case and the issues that you would have to decide.

The issues in this case, in fact, are fairly simple. Although no one suggests to you what its resolution will be.

In essence, the Plaintiff claims that he was promoted to detective from patrolman. That the detective department is a separate rank or position, requiring a hearing, before he could be demoted or disciplined.

The Defendant, on the other hand, contends that the detective department is not a separate rank or position. That the Plaintiff was subject to reassignment as a patrolman at anytime, without the necessity of giving him a hearing. That is basically the issue in this case. So you will have to decide first, that issue.

[15] Then you will have to decide whether or not the action taken by the City, against the Plaintiff, constituted discipline of him and whether under all of the circumstances, he was or was not ever entitled to a hearing.

Finally, if you decide he was entitled to a hearing and there is no suggestion that he received one, whether denial caused him damage and if so, what those damages are.

So, basically, those are the issues that you will have to decide. But, I will now go into much greater detail, so you will have a better understanding of what the law is and specifically how you should go about deciding this issue.

APPENDIX B — INTERNAL OPERATING PROCEDURES FOR THE THIRD CIRCUIT

CHAPTER 6. JUDGMENT ORDERS

6.1 Panel Unanimity.

A case may be terminated in this court by a judgment order upon the unanimous decision of the panel.

6.2 Criteria.

6.2.1 A judgment order is filed when the panel unanimously determines to affirm the judgment or order of the district court or decision of the Tax Court, enforce or deny review of a decision or order of an administrative agency, or dismiss the appeal or petition for review for lack of jurisdiction or otherwise, and determines that a written opinion will have no precedential or institutional value.

6.2.2 A judgment order may be used when:

(a) The judgment of the district court is based on findings of fact which are not clearly erroneous;

(b) Sufficient evidence supports a jury verdict;

(c) Substantial evidence on the record as a whole supports a decision or order of an administrative agency;

Appendix B

(d) No error of law appears;

(e) The district court did not abuse its discretion on matters addressed thereto; or

(f) The court has no jurisdiction.

APPENDIX C — EXCERPTS OF JURY INSTRUCTION TRANSCRIPT (8T22-2 TO 8T23-1)

[22] * * *

Plaintiff contends that the mutually explicit procedures in this case, was that Plaintiff was a permanent police officer promoted to the rank and position of detective. And as such, he enjoyed a property interest in that rank or position and that the Defendant deprived him of that interest, without due process of law.

Defendant, on the other hand, denies that the employment of a detective is a separate rank or position, or that any permanency is attached to the designation of Plaintiff as a detective, and would not be entitled to the charges and a hearing, and merely reassigned from detective to patrolman.

Plaintiff contends essentially, that the acts of October 11th, 1984, effective October 9th, 1984, and the act of demotion by Director Harrison of October 9, 1984, demoting or reassigning, as you find it, from detective to patrolman, was a disciplinary action which stemmed from the incident at Fox's Disco, October 7, 1984 and Plaintiff was demoted by such disciplinary action to be the faulty party in the eyes of the police, and the City, and his fellow officers.

APPENDIX D — EXCERPTS OF JURY INSTRUCTION TRANSCRIPT (8T29-11 TO 23)

[29] * * *

If you find that Plaintiff does have a property interest in being a detective and also that he was entitled to and denied a hearing and if you also find that even if he had been given a due process hearing, he still would have been a patrolman and made a patrolman, then you should consider that conclusion in determining the amount of damages. Because under the circumstances, only those damages would be awarded. In other words, if you find that he should have been given a hearing, but had he been given a hearing, the result would have been the same, he would only be entitled to nominal damages.

* * *

APPENDIX E — EXCERPTS OF CHARGE CONFERENCE TRANSCRIPT (7T160-23 TO 7T164-9)

[160] * * *

MR. PACHMAN: Am I to understand it is the position of the Court today that the state of the law or the state of the situation is different than when the Court [161] rendered its opinion on January of '89?

MR. SHULMAN: No, the Court never did it.

THE COURT: I never said this provision was not applicable to this case.

MR. SHULMAN: Never.

MR. PACHMAN: What you said was — that was one of the cases, one of the statutes that was under review back then, and we can dig out the briefs if we need to, and you say, It is clear, and indeed undisputed, plaintiff is not a quote, permanent employee as detective under state law. State law does not now recognize such a position, and accordingly plaintiff has not qualified for it by virtue of existing state law.

THE COURT: That is right. But if the jury finds that this is a promotion and a separate office, then of course, do you not agree that this provision would then be applicable?

MR. PACHMAN: Not in the promotion or office were not one to which the employee were permanently appointed which is the language of the statute.

THE COURT: All right.

MR. SHULMAN: I don't think they have to go that far because they can construe it if they feel he has a position of a police officer, he cannot be disciplined without just cause. I stressed that in my closing argument [162] and I think that that is very elementary, because they don't even have to, if they don't want to, even reach the determination if there was, quote, a promotion, unquote.

They can merely say he had position of detective, position of a police officer. He was disciplined without just cause. And that is what the law will entitle them to consider, and this is very appropriate. Because even under all of the United States Supreme Court cases, they say you have to look at state law, and you are basically saying do you consider this applicable or not. That is what a jury instruction is. I don't see how you can deny it.

MR. PACHMAN: Perhaps I misunderstood because of my late entry into the case, but I attempted to read the file very carefully, and it was my understanding based upon the Court's January ruling that I already referred to, January of '89 ruling that this Court as a matter of law had determined that there is no permanency attached to the position of detective.

THE COURT: Under state law.

MR. PACHMAN: Under state law.

MR. SHULMAN: Under civil service.

MR. PACHMAN: No.

MR. SHULMAN: The Supreme Court in the Falcone case said exactly the opposite. They went so far as to reaffirm the

Parapeto case, and they said that the rank or [163] position is distinct from that of a patrolman.

MR. PACHMAN: That is not whether or not you are permanent.

MR. SHULMAN: That is they can consider that one way or the other way.

MR. PACHMAN: No. The Court decided as a matter of law in this case just as in the Babula case, that since civil service does not give a test, and the only way you can be permanent under state law is to have taken a civil service test, that you are not permanent in the position under state law.

MR. SHULMAN: For the civil service.

MR. PACHMAN: No, state law purposes.

MR. SHULMAN: The Parapeto case says Title 40A is to be read —

MR. PACHMAN: But —

THE COURT: Gentlemen, please.

I am going to charge to the jury that if you find that plaintiff was promoted to the rank or position of detective, then you may consider the state law which provides —

MR. PACHMAN: Well, I respectfully, your Honor, want the record to know note I object to it.

Appendix E

THE COURT: I understand, but I think that is appropriate. Just so there is no question about what the [164] Court's view was, the Court found that under civil service there was no position as detective. We have a fact issue now as to whether under the actions taken by Jersey City, they recognized that detective was a separate rank or position, and if they do, then they have a right to consider the state law as to what procedures had to be followed in order to remove him from that position, and this statute is some evidence of that, and so I am going to charge that over the defendant's objection.

APPENDIX F — EXCERPTS OF CHARGE CONFERENCE TRANSCRIPT (7T166-22 TO 7T167-9)

[166] THE COURT: Wait a minute.

The language reads: "It is clear that under the law, a course of dealing may result in an implied contract. The course of dealing would include the length of service, [167] whether there was an increase in salary, and whether there were other indicia of the rank and position which gives rise to the expectation that said rank or position would continue."

MR. PACHMAN: That is all I am saying.

MR. SHULMAN: Fine. Fine.

MR. PACHMAN: That was the thought that I had, because the sentence simply didn't make sense in English.

THE COURT: That makes perfectly good sense.

APPENDIX G — NOTICE OF APPEAL FILED DECEMBER 10, 1990

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

DOCKET #86-3869 (H.L.S.)

Civil Action

MICHAEL J. REDFIELD,

Plaintiff-Respondent

vs.

CITY OF JERSEY CITY,

Defendant-Appellant

NOTICE OF APPEAL

Notice is hereby given that the City of Jersey City, Defendant above named, hereby appeals to the United States Court of Appeals for the Third Circuit from the Order and Judgment entered in this action by the Honorable H. Lee Sarokin, U.S.D.J., on the 13th day of November 1990, and from the Order of Honorable H. Lee Sarokin, U.S.D.J., denying Defendant's

Appendix G

Motion for a Judgment Notwithstanding the Verdict, entered on the 3rd day of December 1990.

s/ Martin R. Pachman
MARTIN R. PACHMAN,
ESQUIRE